12–20–06 Wednesday
Vol. 71 No. 244 Dec. 20, 2006

Pages 76111–76570

Federal Register

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FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 619, 620, 621, 624, 627, and 630

RIN 3052–AC11

Organization; Definitions; Disclosure to Shareholders; Accounting and Reporting Requirements; Regulatory Accounting Practices; Title IV Conservators, Receivers, and Voluntary Liquidations; and Disclosure to Investors in System-Wide and Consolidated Bank Debt Obligations of the Farm Credit System

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) issues this final rule amending our disclosure and reporting regulations for Farm Credit System (System) institutions. The final rule clarifies and enhances existing disclosure requirements for reports to System shareholders and investors. The rule provides for ''real time'' disclosures to shareholders, investors, and the public by accelerating the time period for filing annual and quarterly reports. The final rule requires the Federal Farm Credit Banks Funding Corporation (Funding Corporation) to issue interim reports to investors in System-wide debt obligations based on policies and procedures it would have to adopt. Issuing interim reports will improve the timely and accurate distribution of System-wide financial information. The rule also supports financial accuracy certifications in periodic reports for all System institutions by requiring management of the Funding Corporation and the largest System institutions (with over $1 billion in assets) to annually review and report on the internal control over financial reporting. The Funding Corporation will have to provide for an annual attestation from its external auditor on the Funding Corporation's assessment of internal control over financial reporting. Further, this rule creates a regulatory section on the independence of external auditors, adding restrictions on non-audit services and conflicts of interest, as well as requiring auditor rotation.

DATES: *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register**, during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

Compliance Date: Compliance with all provisions of the rule must be achieved by the start of the fiscal year immediately following the effective date of this rule, unless the start of that fiscal year is within 3 months or less of the effective date. In that case, full compliance is delayed until the start of the next full fiscal year.

FOR FURTHER INFORMATION CONTACT:

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or

Laura McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

Our objectives in this rulemaking are to:

- Incorporate recent changes in industry practices into our financial disclosure and reporting requirements for System institutions;
- Augment existing reporting timeframes with ''real time disclosure'' principles to improve shareholder, investor, and public access to material financial information used in informed investment decisionmaking;
- Strengthen the independence of System financial audits;
- Streamline the financial reporting certification requirement, making them easier to understand and use; and
- Enhance shareholders' and investors' understanding of, and confidence in, the System's operations through improved transparency.

II. Background

The Farm Credit Act of 1971, as amended (Act),[1] authorizes FCA to issue regulations implementing the provisions of the Act. The 1985 Amendments to the Act[2] added provisions requiring FCA to regulate the disclosure and reporting practices of System institutions and require each System institution to prepare and publish annual financial reports to shareholders. The Act at section 5.19(b)(1) also requires that financial statements be prepared in accordance with generally accepted accounting principles (GAAP) and be audited by an independent public accountant.

Our existing regulations require each System institution to prepare annual and quarterly reports, identifying the minimum information requirements of the reports. Our existing regulations also set forth reporting timeframes and signatory requirements for the reports to ensure that System institutions provide timely and reliable financial information to multiple audiences, including borrowers, shareholders, investors and the public.

On March 14, 2006, we published a proposed rule (71 FR 13040) to amend those sections of parts 620, 621 and 630 affecting reporting timeframes, certifications and external auditors. We also proposed other amendments to our reporting and disclosure regulations. In the course of developing this rule, we considered the disclosure and reporting practices of publicly traded companies, reporting requirements of the Federal Deposit Insurance Corporation (FDIC) and other Federal bank regulatory agencies, the financial reporting and disclosure provisions of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley)[3] and the Securities and Exchange Commission (SEC) implementing regulations. We also considered studies and public statements of individuals and organizations with knowledge and expertise in financial disclosure and reporting practices. Throughout this process we evaluated changes to our rules against our role as the safety and soundness regulator of the System and the System's cooperative structure.

The comment period for the proposed rule closed on June 12, 2006.

[1] Pub. L. 92–181 (Dec. 10, 1971).

[2] Farm Credit Amendments Act of 1985, Pub. L. 99–205 (Dec. 23, 1985).

[3] Pub. L. 107–204 (July 30, 2002).

III. Comments and Our Response

We received 14 comment letters on our proposed rule, all from individuals and entities associated with the System. Of the comments received, eleven were from System associations, two were from Farm Credit banks, and one was from the Farm Credit Council (FCC), acting for its membership and the Funding Corporation. In general, most commenters supported the proposed rule, but suggested changes to our proposal on internal control assessments, reporting timeframes and auditor rotation. One association commenter stated our proposed rule was generally burdensome and not cost effective, while another thanked us for focusing on eliminating unnecessary burdens for System institutions. Still another commenter asked us to mitigate the ''negative impact'' of the rule to allow more effective use of shareholder patronage dollars. We discuss and respond to the comments to our proposed rule below. Those provisions of the proposed rule on which we did not receive comments are finalized as proposed.

A. Definition of Qualified Public Accountant [new § 619.9270 and § 621.2(i)]

We received no comments on our proposed definition of ''qualified public accountant'' or on moving the term from § 621.2(i) to § 619.9270. We adopt this proposed provision as final. In conformance with this change, we remove the § 621.2(i) reference in §§ 611.1250(a)(3) and (b)(4), 611.1255(a)(3) and (b)(4), 620.5(m)(1), and 630.20(l).

B. Certification and Submission of Financial Reports [§§ 620.2, 620.3, 620.5, 627.2785(d), 630.3, 630.4 and 630.5]

1. Report Submissions, Signatures, and Certification of Financial Accuracy

[§§ 620.2, 620.3, 620.5, 627.2785(d), 630.3, 630.4, and 630.5]

We received no comments on our proposal to remove the requirement that multiple copies of reports be sent to us. We also received no comments on our proposed changes to the signatory and financial accuracy requirements for reports. We adopt these proposed provisions as final with a minor clarification to redesignated § 630.4(c) to clarify that it is the signature and certification provisions of § 620.3 that are applicable to information submitted to the funding banks by associations for the System-wide report. We also adopt the conforming technical changes requiring all reports, regardless of the recipient, to comply with §§ 620.3 and 630.5, as well as technical changes to §§ 630.20(h)(1); 620.5(m)(2); 630.4(a)(4), (b)(5) and (c)(1); and 627.2785(d).

We received six comments from five associations and one Farm Credit bank on our existing rule at § 630.4 dealing with the supply of information to the Funding Corporation. The Farm Credit bank supported our existing rule, but the associations stated that our rule at § 630.4 obligates the associations to provide their funding bank with the information necessary for the bank to provide accurate and complete district information to the Funding Corporation. The commenters stated it is inappropriate and burdensome to regulate the relationship between the associations and their funding bank and asked that the provision be removed. The commenters asked that the associations and banks be allowed to use contractual relationships to orchestrate how district information is provided to the Funding Corporation. The commenters suggested the general financing agreement (GFA) as an appropriate tool for negotiating how to submit the required information. One commenter explained that banks should work with associations to determine the information necessary, rather than giving the bank ''regulatory authority.'' Another commenter stated that the current information submission relationship works adequately and does not require a revision.

While we agree that the Funding Corporation, banks and associations should work together to identify the information provided for the System-wide report, we do not believe that a contractual relationship, or a GFA, is an appropriate method of ensuring the Funding Corporation receives information necessary to prepare the report to investors. It is essential that the banks and associations be held accountable to their regulator for providing the Funding Corporation with necessary financial information to ensure an accurate, timely and complete report is provided to System investors. We also point out that this requirement has been in existence since 1994 and is not a new proposal. We only proposed changes to the certification and signatory requirements to the existing submission requirements, as well as limiting access to the individual institution's external auditor. These changes were proposed to reduce the burden on associations and banks by using the same signatures and certifications for both the Report to Shareholders and for the information submitted to the Funding Corporation. We are not removing the existing requirement in § 630.4 that associations provide their funding bank with information needed by the Funding Corporation and adopt the proposed modifications to § 630.4 to require banks and associations to submit information complying with the signature and certification requirements in § 620.3. We also remove, as proposed, the provision that previously allowed the Funding Corporation and banks to question another System institution's external auditor about submissions for the System-wide report.

2. Bank and Association Assessment of Internal Control Over Financial Reporting

[§ 620.3(d)]

We proposed adding a new § 620.3(d) requiring each institution with total assets over $500 million (as of the end of the previous fiscal year) to perform a management assessment of the institution's internal financial controls and report the results of the assessment in the annual and quarterly reports of the institution. We received comments from the FCC, two Farm Credit banks and nine associations opposing the type and frequency of the assessment of internal financial controls. The commenters first asked that we replace the phrase ''assessment of the internal financial controls of the institution'' with ''assessment of internal control over financial reporting.'' Commenters stated the suggested change conforms to the industry standard, explaining that any language different from the industry standard may be confusing or lead to misunderstandings. Commenters also said that an ''assessment of internal control over financial reporting'' is distinguishable from the general requirements for internal controls in part 618 of our regulations.

We agree that an assessment of internal control over financial reporting has a narrow focus when compared to the general requirements for internal controls in part 618 of our regulations; part 618 addresses an institution's internal controls associated with enterprise risk management and corporate governance. We also agree that using the industry phrase ''internal control over financial reporting'' facilitates an application of uniform procedures in internal control assessments, minimizing potential confusion. The SEC, in adopting regulations implementing Sarbanes-Oxley, explained that ''internal control over financial reporting'' is the predominant term used by companies and auditors and best encompasses the

objectives of the Sarbanes-Oxley Act.'' [4] Although System institutions are not covered by this provision of Sarbanes-Oxley, nor regulated by the SEC, the SEC rule is generally regarded as the industry standard in this area. Accordingly, we replaced the proposed references to ''internal control over financial reporting'' in the final rule.

Second, the commenters asked that the frequency of the assessment requirement be changed to an annual requirement, following industry standards and best practices. The commenters stated that current best practices only require such assessments on an annual basis, not quarterly as we proposed. One Farm Credit bank acknowledged that Sarbanes-Oxley requires a quarterly evaluation of internal controls, but does not require that the evaluation be disclosed or included in quarterly reports. Two commenters specifically asked that the quarterly update be part of the certification of financial accuracy. Three commenters stated that quarterly assessments create an undue burden and estimated the cost at $30,000 for each assessment, increasing the association's cost by $90,000 over that of publicly traded companies who only conduct an annual assessment.

We agree that both a quarterly and annual assessment may be too burdensome given the cooperative nature of the System and have replaced the proposed quarterly requirement with a quarterly update on material changes in the internal control over financial reporting. Although most commenters suggested a quarterly update only at the System-wide level, we are keeping the requirement at the entity level for the same reasons that we are keeping the requirement for an annual assessment at the entity level. In the final rule, we require that an institution disclose any material change in the internal control over financial reporting occurring during the reporting period. We expect institutions to disclose changes that materially affected, or are reasonably likely to materially affect, the institution's internal control over financial reporting. We believe disclosing material changes in internal control over financial reporting is more efficient and less costly than requiring an institution to perform a quarterly assessment and responds to commenters concerns in this area. Such a requirement is also more consistent with industry best practices. We decline the suggestion that the internal control assessment be part of the certification. We consider the certification of financial accuracy to be a separate and extremely important process. Internal control updates, while they may impact the financial reporting, should not be blended into an accuracy certification. We expect internal control quarterly updates to be separate from the financial accuracy certification.

Third, some commenters objected to the assessment being required at an entity level (i.e., the individual institution level), stating that a System-wide assessment would provide the most meaningful protection to shareholders and investors. Commenters stated a significant amount of time and expense would be required for each System institution to perform an assessment of internal control over financial reporting. One commenter stated that an entity-level assessment would harm, not help, shareholders, while another argued entity-level assessments were not practical, cost effective and not beneficial to shareholders. The commenters also disagreed with our statement in the preamble of the proposed rule that most institutions already plan to prepare the assessments, stating System institutions assess their internal control over financial reporting as part of an overall System-wide evaluation of internal controls over financial reporting. The commenters clarified that the System has conducted an annual assessment of internal control over financial reporting for the System-wide Report to Investors since the 2005 reporting year. The FCC specifically described the nature of the current System-wide assessment, explaining the scope of work is limited at the bank and association level to information that would be provided to the Funding Corporation to develop the System-wide report. The commenters also asserted that the scope of work for this System-wide evaluation is at a much higher materiality level than an assessment made on an individual entity basis and, as a result, the amount of work necessary to perform an entity-level assessment is significantly greater than that currently being performed. One Farm Credit bank explained internal controls relevant to a System-wide assessment are different from controls needed at an entity level, making the two types of assessments fundamentally different. This commenter also asked us to weigh the benefit versus the cost, explaining the lack of traded stock at the entity level reduced the critical need for the assessment.

We recognize additional work may be required for an entity-level assessment and may involve additional time and expense. We do not agree, however, that the benefit of an entity-level assessment is not as great as it may be for a System-wide assessment. We continue to believe that the requirement for management's assessment of internal control over financial reporting provides a valuable assurance to System shareholders, investors, and potential investors that internal control procedures are periodically reviewed. While System stock is not publicly traded, we do not believe this fact necessarily minimizes the interest, financial and otherwise, that System stockholders have in the operations of the institutions of which they are members, and particularly if those institutions allocate patronage to their shareholders. Management's responsibility for establishing and maintaining adequate internal control over financial reporting, and for assessing the effectiveness of that control, serves to enhance the quality of reporting by identifying potentially damaging practices within the institution. Furthermore, we believe the requirement to provide an assessment of internal control over financial reporting serves to enhance the safety and soundness of these institutions, reflects best practices and promotes comparability of reporting with other businesses in the financial services sector. While a requirement for an entity-level assessment may increase the costs, we believe these costs are justified, especially in the largest institutions, to maintain the quality of reporting in more complex operations and are mitigated somewhat by the current efforts of banks and associations to facilitate an assessment of internal control over financial reporting at the System level. We adopt as final the requirement that the Funding Corporation and the largest institutions provide an assessment of internal control over financial reporting in their annual reports.

Fourth, commenters asked that we change the minimum requirement for the assessment to more closely reflect industry practices. We agree that we do not need to regulate, at the present time, the specific content of the assessment since there are sufficient guidelines for System institutions to follow. The final rule requires a report on management's assessment of internal control over financial reporting to be included in the annual report to shareholders without specifying the content of the internal control report. We believe removing this specificity gives institutions the flexibility to pattern the content of their management report, including any topics addressed or recitations made by

[4] *See* 68 FR 36636 (June 18, 2003).

management, after industry standards and best practices. For example, institutions may wish to consider SEC rules for assessments of internal control over financial reporting in publicly traded companies. Publicly traded companies state in their assessment management's responsibility for establishing and maintaining adequate internal control over financial reporting for the institution; the framework used by management to evaluate the effectiveness of the internal control over financial reporting; and whether or not the internal control over financial reporting is effective. These companies also discuss any material weakness in internal control over financial reporting and may not conclude that the internal control over financial reporting is effective if one or more material weakness exists.

While we have removed some of the proposed content requirements of the internal control assessment, the final rule maintains the requirement that the assessment be reported to the institution's board. We also remind institutions that each audit committee has oversight responsibility for the internal control over financial reports under existing § 620.30(d)(3) and to involve them accordingly in the assessment reporting process.

Finally, the commenters asked that, should we retain the requirement for an entity-level assessment, we re-define a large institution as one with over $1 billion in assets and that they be the only institutions required to conduct the assessment of internal control over financial reporting. The commenters stated that an entity-level assessment by institutions of this size conforms more closely to current best practices and such a requirement is consistent with other regulators. One Farm Credit bank specifically commented that the FDIC uses $1 billion for commercial banks and that we offered no reason for proposing a lower level.

We continue to consider a large institution as one with $500 million or more in total assets, but agree that a higher threshold for identifying institutions that must conduct the assessment of internal control over financial reporting is appropriate. We have changed the requirement to only require the largest institutions to conduct the internal control assessment, which we define as those institutions with total assets over $1 billion (as of the end of the previous fiscal year). We were persuaded by the commenters' arguments that smaller institutions may have more difficulty in evaluating their internal control over financial reporting because they have more limited resources and may not have as sophisticated a system of internal control over financial reporting as the largest institutions. We believe a $1 billion threshold level appropriately balances the additional effort, resources, and costs against the benefits derived by the largest institutions, who tend to have more complex operations. We are also mindful that the $1 billion threshold level encompasses approximately 70 percent of the System assets and includes institutions in each Farm Credit district.

While mandatory compliance with the provision for an annual management assessment of internal control over financial reporting is not required for those institutions with total assets of $1 billion or less, we encourage those institutions to voluntarily assess their internal control over financial reporting as we believe it is representative of industry best practices. We also encourage System institutions to consider, where appropriate, enhanced disclosures to shareholders that address the work performed by an institution in evaluating its internal controls to facilitate the Funding Corporation management's assessment of internal control over financial reporting and related external auditor attestation regarding the System's assessment.

3. Funding Corporation Assessment of Internal Control Over Financial Reporting and Auditor Attestation

[§ 630.5(d)]

We proposed requirements for the System-wide Report to Investors that are similar to those for banks and associations pertaining to management assessment of the internal control over financial reporting in the annual and quarterly reports. Commenters reiterated their earlier remarks regarding the terminology, frequency, and detail of the internal control assessment. For reasons discussed in Section III.B.2 of this preamble, we make the corresponding changes to § 630.5 for System-wide reports.

We proposed an additional requirement at the System-wide level for an external auditor attestation on management's assessment of the internal control over financial reporting. We received comments from the FCC, two banks and eight associations concerning this provision. The commenters, while not objecting to the external auditor attestation, stated that the external auditor might not be able to make the statement required by the proposed regulation. They explained that accounting firms must comply with Auditing Standard No. 2, ''An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements,'' issued by the Public Company Accounting Oversight Board (PCAOB) for clients registered with the SEC.[5] Commenters pointed out that the differences between our proposed rule and the PCAOB standard might cause a conflict for the external auditor and requested we reconcile our rule to the PCAOB standard.

We are removing specific statements that an auditor must make from the final rule provision on an auditor attestation. We agree that describing the content of the auditor's report on management's assessment of internal control over financial reporting may have potentially created a conflict between the rule and the relevant PCAOB standard. We believe that the external auditor's attestation report should conform to applicable industry standards. Accordingly, we have adopted as final the requirement for an attestation report in § 630.5(d)(2) in a manner that does not conflict with the PCAOB standard by removing any specificity as to the content of the report.

C. Timing of Periodic Reports to Shareholders and Investors

1. Annual and Quarterly Report Filing Deadlines

[§§ 620.4(a), 620.10(a) and 630.3(a)]

We proposed reducing the quarterly reporting deadline to 40 calendar days and reducing the annual reporting deadline to 75 calendar days. We received comments from the FCC, two banks and eight associations opposing the reduction of filing deadlines for quarterly or annual reports or both. Most commenters asked that the timeframes for quarterly reports remain at 45 days. Three commenters recommended that the reporting timeframe for quarterly reports be in the range of 75 days, the same as annual reports. Some commenters stated that 40 days does not provide adequate time to prepare the quarterly reports and address any unforeseen contingencies, such as litigation matters, and subsequent events. A Farm Credit bank commented that while technology has improved the ability to process and disseminate reports, time is still needed to ensure that information is accurate

[5] *See* PCAOB Auditing Standard No. 2, ''An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements.'' Among other things, Auditing Standard No. 2 establishes specific requirements for the elements that must be included in the auditor's report on management's assessment of internal control over financial reporting.

and timely. The bank also asked us to consider the variations in the sizes and complexities of the System institutions while remarking that though FCA filing deadlines appear longer than those of the SEC, they aren't. The SEC makes a distinction between accelerated filers and others, providing different deadlines due to market needs. The commenters asked us to balance the burden against the shareholder need before requiring the same deadlines as the SEC. We considered the same information presented by this commenter when proposing abbreviated deadlines and point out that the proposed deadlines are not the same as the SEC. The SEC gives 60 days to file annual reports and we proposed 75 days. While the commenter did not object to our annual report filing timeframe, they did object to the timeframe for quarterly reports. One Farm Credit bank specifically stated that the additional time is more critical for quarterly reports than annual reports and therefore did not object to the proposed reduction in annual report filing deadlines, only to quarterly report deadlines.

Commenters also stated it would be difficult for the Funding Corporation to meet the 40-day deadline in view of the information that must be provided by the associations to the banks and the banks to the Funding Corporation. The commenters explained that requiring System-wide information statements to be published within 40 days after the end of the quarter is an unduly tight timeframe given the need to combine approximately 100 entities. Commenters stated that, since it would only take one institution to cause the Funding Corporation to not make the deadline, they believe a more appropriate timeframe for quarterly reports is 45 days. They also remarked on the responsibility to provide information to the Funding Corporation while completing their own quarterly reports.

We continue to believe the System's ability to capture, process, and disseminate financial statement information has improved significantly with the advancement of technology. We also do not believe increasing the quarterly deadline to 75 days is a reasonable suggestion, especially as the existing rule provides a maximum of 45 days for bank and association quarterly reports and 60 days for the Funding Corporation. System institutions have enhanced technological resources that improve their ability to process financial data. Therefore, a longer filing deadline at the entity level cannot be justified, especially as industry practices call for faster, ''real time'' disclosure to shareholders and investors. However, we understand the importance of having adequate time to prepare financial information that is accurate and meaningful, and the complications of having information reported from the associations to the banks, and by the banks to the Funding Corporation. Accordingly, we increased the deadline for the issuance of the System-wide quarterly report to investors to 45 calendar days, while keeping the quarterly reporting due date for banks and associations at 40 calendar days. We believe this change will facilitate furnishing information to the Funding Corporation without unduly delaying bank and association quarterly reports. However we are not increasing the proposed filing time for annual reports. We believe the 75-day filing requirement for bank, association, and System-wide annual reports is well within the reporting capabilities of these institutions and most commenters did not object to this requirement. The filing time for annual reports in both our existing rule and in this final rule is 30 days longer than the time provided for filing quarterly reports. While we appreciate that extra time may be desirable for compilation of the System-wide annual report to investors, we believe sufficient time is already incorporated into the overall annual reporting deadline so that a separate, longer filing deadline for the annual System-wide report is unnecessary. Accordingly, we adopt this proposed provision as final.

2. System-wide Interim Reports

[new § 630.3(a)(3)]

We proposed that the Funding Corporation issue interim reports to disclose significant events or material changes in System-wide operations occurring after publication of a quarterly or annual System-wide report. We received no comments on this proposed requirement and adopt this provision as final.

D. Auditor Independence

[§§ 621.4(b), new 621.30, new 621.31, and new 621.32]

We proposed a new subpart in part 621 to facilitate external auditor independence within the System. We received limited comments on certain aspects of this subpart and discuss them below.

1. Prohibited Non-Audit Services

[new § 621.31(a)]

We proposed adding a new § 621.31 prohibiting external auditors of System institutions from providing certain non-audit services. We also proposed, as a conforming change, removing the requirement that banks and associations include a provision in their audit engagement letters authorizing the external auditors to respond to questions from funding banks and the Funding Corporation. We received one comment on this section of our proposed rule. A Farm Credit bank commented that it did not object to the list of non-audit services, but asked that we clarify the prohibition at § 621.31(a)(8) against advocating an institution's interests in litigation, regulatory or administrative investigations and proceedings. The commenter remarked that SEC regulations on auditor independence place advocating an audit client's interests in litigation, or regulatory or administrative investigations or proceedings, under the general heading of ''expert services'' and is not a category unto itself. The commenter also explained that the SEC's commentary relative to this prohibition states that an accountant would not be precluded from performing internal investigations or fact finding at the request of the client's audit committee or legal counsel. The commenter also said that, under SEC rules, an auditor's work product may be used by the client and auditors may provide factual accounts or testimony about the work performed. This commenter also stated that our rule did not identify the basic principles of auditor independence. We note that auditor independence principles are contained in our proposed definition of an independent auditor at § 619.9270.

We have clarified the list of non-audit services to more clearly explain that the external auditor may not advocate an institution's interest in any area that is not the subject of audit work. The external auditor may not provide an expert opinion or other expert service for activities of the institution that fall outside the auditor's work reviewing financial statements. This prohibition does not preclude the external auditor from performing internal investigations or fact finding on items covered by an audit when requested by the institution's audit committee or legal counsel. We clarify that our rule follows the SEC regulations implementing section 201 of Sarbanes-Oxley, which explain that non-audit services may not include an accountant providing expert opinions or other services for the purpose of advocating an audit client's interests in litigation, regulatory or administrative investigations and proceedings. However, auditors may perform internal investigations or fact

findings that results in a report to the audit client. We clarify that, as an extension of their audit work, external auditors are allowed to use their work product and provide factual accounts or testimony about the audit work performed. We adopt all other proposed provisions of § 621.31 as final.

2. Permitted Non-Audit Services

[§§ 620.30, new 621.31 and 630.6]

We proposed requiring System institutions to obtain its audit committee's approval prior to contracting for permissible non-audit services from the external auditor. The proposed rule also amended the authorities of the audit committees to specifically include approval of non-audit services. One Farm Credit bank commented that the proposed regulation contemplates that, under certain circumstances, an audit committee may approve a non-audit service that is on the prohibited list but, does not provide any guidance on what circumstances might make a non-audit service acceptable. The commenter suggested including in our rule the three basic principles identified in SEC's regulations, on which the prohibited list of non-audit services is based: (1) An auditor cannot function in the role of management, (2) an auditor cannot audit his or her own work, and (3) an auditor cannot serve in an advocacy role for the audit client.

The commenter appears to have misinterpreted the requirements of proposed § 621.31(b). The proposed regulation does not allow an audit committee to approve non-audit services that are on the prohibited list. We have clarified the rule text to reflect that the audit committee may only approve non-audit services not specifically listed as prohibited in § 621.31(a). Further, the three basic principles of auditor independence identified by the commenter are already captured in new § 619.9270, defining independent external auditors. We received no other comments on § 621.31(b) and adopt it as final.

3. Auditor Conflicts of Interest and Rotation

[new § 621.32]

a. ''Cooling Off'' Period [new § 621.32(a)]

We received no comments on the proposed prohibition that a System institution may not engage the audit services of a qualified public accountant if the accountant, accounting partner (or concurring partner), or lead audit team member was an employee, officer or director of the System institution in the 12 months prior to contracting for audit services. Nor did we receive comments on the proposed prohibition that an institution may not make employment offers to an external auditor, accounting firm partner, concurring partner, or lead audit team member during the audit, or within 1 year of its conclusion. We adopt these proposed provisions as final.

b. Auditor Rotation [new § 621.32(b)]

We proposed prohibiting a System institution from engaging for 5 years the same lead and reviewing audit partner after 5 consecutive years of audit services to that institution. The commenters agreed that the lead (or concurring) audit partners for the System-wide report should be rotated after 5 years, with a 5-year timeout period, but asked that external auditors for banks and associations have a 7-year rotation. We received only one comment on the ''time out'' period. This commenter said the time out period of the lead (or concurring) audit partners for the banks and associations should be 2 years. The commenters explained that a 7-year rotation timeframe at the bank and association level is more consistent with the requirements for publicly traded companies.

The commenters contend a 7-year engagement at the bank and association level is justified because a partner must invest considerable time to develop an understanding of the System and requiring this learning process every 5 years would be inefficient. One Farm Credit bank commented that the System's relationship with the external auditor is managed at both a System-wide level and an individual institution level. The commenter stated this ''two-tiered'' relationship warrants a two-tiered rotation schedule where the lead and concurring auditor partners engaged for the System-wide report would have a 5-year rotation, but the lead and concurring auditor partners engaged by each bank and association would have a 7-year rotation and 2-year time out, similar to the SEC's rules for corporations and their subsidiaries. This commenter, and one other association commenter, explained that the SEC treatment of auditor rotation for subsidiaries, which may allow for a longer rotation period in certain circumstances, is more appropriate for the System.

After careful review, we concluded that the SEC's treatment of auditor rotation for subsidiaries is not an appropriate approach given the cooperative structure of the System. Unlike a subsidiary structure, associations are the borrowers, members, and shareholders of the bank, consistent with the cooperative structure of the System. We also concluded that auditor engagements are appropriately handled using a uniform approach that recognizes the interdependency of System institutions, but preserves the independent authority of each institution to determine the engagement of its own external auditor. Basing an auditor rotation on a two-tier method modeled after the SEC's approach might be in conflict with this authority because a two-tiered rotation is designed to reflect a traditional subsidiary structure rather than the cooperative structure of the Farm Credit System.

We also do not agree that a longer engagement period at the bank and association level is necessary. A 5-year audit partner rotation and 5-year cooling off period for the lead and concurring audit partners is consistent with industry best practices and section 203 of Sarbanes-Oxley. While commenters are correct that the SEC allows for a 7-year audit partner engagement, this time period is restricted to other significant members of the audit team who are not the lead, concurring or reviewing partner. The SEC rule applies a 7-year rotation schedule to those partners who are not the lead, concurring, or reviewing partner but who are responsible for decisionmaking on significant auditing, accounting, and reporting matters affecting financial statements or who maintain regular contact with the audit client management and audit committee. The SEC imposes a 5-year ''time-out'' for the lead and concurring accounting partners and a 2-year ''time-out'' for other rotated partners before returning to a client.

While we used industry practice, as well as the SEC rule and Sarbanes-Oxley, as guides we also considered the time a lead partner must invest to acquire an understanding of the System. That consideration resulted in our limiting the rotation from the audited institution only, instead of requiring a rotation out of the entire System. Our final rule does not prohibit or otherwise limit lead and concurring partners from moving from one System institution to another, whether it is a bank or association. We adopt this proposed provision as final.

We make a technical change to correctly identify the location of the audit independence provisions as subpart E, not subpart F as stated in the proposed rule.

E. Contents of Periodic Reports

[§§ 620.5 and 630.20]

1. Description of Property

[§ 620.5(b)]

We received no comments on our proposal to remove the requirement at § 620.5(b) that Farm Credit banks and associations describe, in their annual reports, the terms and condition of agreements involving institution property subject to major encumbrances. We adopt this proposed provision as final.

2. Legal Proceedings and Enforcement

[§ 620.5(c)(1)]

We received no comments on our proposal to remove that portion of § 620.5(c)(1) requiring banks and associations to provide filing information on court proceedings, including a description of factual allegations, in annual reports. We adopt this proposed provision as final.

3. Selected Financial Data and Management Discussion and Analysis (MD&A)

[§§ 620.5(f) and 620.5(g)]

We received no comments on our proposed clarification in § 620.5(f)(1), (g)(l)(iii)(A) and (g)(l)(iv)(E) that disclosure of selected financial data, loan purchases and sales involving the Federal Agricultural Mortgage Corporation, and risk exposure need only be reported if they are material. Nor did we receive any comments on removing the reference in § 620.5(g)(1)(iv)(E) to section 8.7 of the Act or on revising the requirement for a discussion of the adequacy of loan loss allowances in § 620.5(g)(l)(iv)(B). We adopt these proposed provisions as final.

4. Fees to Qualified Public Accountants

[§ 620.5(l)(2)]

We received no comments on requiring System institutions to disclose the fees paid to their qualified public accountants. We adopt this proposed provision as final.

5. Selected Financial Data

[§ 630.20(f)]

We received no comments on our proposed clarification to § 630.20(f) that this section requires only material combined financial data for 5 years, not all financial data. We adopt this proposed provision as final.

6. Reporting on Young, Beginning and Small Farmers

[§§ 614.4165(c), 620.5(n) and 630.20(p)]

In the proposed rule we addressed comments on our existing regulations received before developing the proposed and final rule. These comments included a request to reduce regulatory burden by restricting the young, beginning and small farmers (YBS) reporting requirement to association annual reports and delete the specificity required by § 614.4165(c). We declined in our proposed rule to make these changes. Commenters renewed this request in response to our proposed rule.

We are making no changes to §§ 620.5(n) and 630.20(p), which require annual reports to shareholders and investors include information on YBS lending activities. As we discussed in the proposed rule, section 4.19 of the Act requires Farm Credit banks to submit an annual report to FCA summarizing the YBS operations and achievements of their affiliated associations. We continue to believe reporting to shareholders and the public on the YBS mission underscores the importance of the System's public purpose mission and the YBS mission, resulting in greater transparency to the public on the System's accomplishments in this area.

7. Financial Assistance Corporation (FAC)

[§§ 630.2, 630.4, and 630.20(b)]

We proposed removing references to the FAC from the definition of ''disclosure entity'' in § 630.2(c) and removing §§ 630.4(b) and 630.20(b)(3) outlining the responsibilities of the FAC. We received comments from the FCC and five associations requesting that we also remove § 630.20(a)(3) and (m)(2)(iii) where the FAC is mentioned. Commenters stated that these sections serve no useful purpose since there is no activity at the FAC and the FAC will be dissolved no later than June 2007. The FAC has discharged all of its responsibilities with respect to the repayment of FAC obligations and has no reportable financial data as of September 30, 2005. There is no existing § 630.20(a)(3) as referenced by the commenters, but we presume they meant § 630.20(b)(3). We proposed removing this reference and take this comment as agreement with our proposal. However, we did not propose removing § 630.20(m)(2)(iii) but agree with commenters that the reference to the FAC should be removed from § 630.20(m)(2)(iii) for the same reasons we used when proposing removal of other FAC references in our rule. Accordingly, we remove this provision in the final rule and consider this additional change to be a conforming technical correction.

F. Other Issues

1. Regulatory Accounting Practices

[Part 624]

We received no comments on removing part 624, which authorized System institutions to use Regulatory Accounting Practices to defer certain interest costs and portions of the provision for loan losses. We adopt this proposed provision as final.

2. Report to Investor Cross Reference

[§§ 630.20(h), 630.20(i), and 630.4(a)(4)]

We proposed changing the cross-reference in § 630.20(h)(1) and (i) on how certain information would be available from § 630.3(f) to § 630.4(a)(5) and (a)(6). One commenter was unclear as to the basis for this change while another questioned the accuracy of the proposed cite. The existing rule contains an incorrect cross-reference that came about from prior revisions to the rule. We are correcting the reference at § 630.20(i) to reflect the correct cite of § 630.3(g), rather than the proposed cite of § 630.4(a)(5) and (a)(6). We are removing the cross reference from § 630.20(h)(1) entirely as it is not required.

3. Distribution of Annual Report to Shareholder

[§§ 620.1(q) and 620.4(a)]

a. Method of Distribution

We received comments from the FCC, a Farm Credit bank and six associations asking that the requirement in § 620.4(a) for each System institution to provide its shareholders an annual report be altered. In an effort to reduce regulatory burden and make annual report distribution more cost effective, the commenters asked that we allow annual reports to be issued in other than a printed ''hard copy.'' Commenters also suggested that shareholders be allowed to ''opt out'' of automatically receiving a printed copy of the annual report. For those shareholders who elected not to receive a printed copy of the annual report, a copy would be available on the institution's Web site.

We proposed no changes to these sections. Because the comments are outside the scope of the proposed rule, we are not making any changes in response to the comments. We point out that, under our current regulations on E-Commerce, shareholders and their institutions already have a choice to

receive electronic copies of reports. Our rules provide that if all participants agree, electronic communication may be used. Therefore, if an individual shareholder and his or her institution agree, the shareholder may be given electronic reports. We caution that an institution, under our current E-Commerce rules, may not require a shareholder to use electronic commerce. This issue was also addressed in our July 26, 2002, Informational Memorandum entitled ''Specific Guidance on Electronic Disclosures and Notices'' in which we stated that System institutions may do business electronically if all parties agree. Comments received as part of any future rulemaking that addresses this area will be considered at that time.

b. Definition of ''Shareholder''

We received comments from the FCC, a Farm Credit bank and six associations asking that we change our definition of ''shareholders'' contained in § 620.1(q). We define shareholder in § 620.1(q) as all equity holders in an institution. Commenters asked us to exclude Non-qualified Surplus Allocated—Retained shareholders from the definition, which would remove those equity holders from those required to receive annual reports. Commenters also asked to exclude from this group shareholders who have paid-off loans and retired stock. Because there are no plans to redeem this surplus, commenters argue that this group of shareholders has no vested interest in the institution and therefore no need for the annual report. The commenters also asserted that significant cost savings would result from only providing reports to ''current common and preferred'' shareholders.

We proposed no changes to this section. Because the comments are outside the scope of this rulemaking, we are not making any changes in response to the comments. We will, however, address any such future comments when applicable to other rulemaking.

4. Disclosures in the Quarterly and Annual Report to Shareholders

[§§ 620.5 and 620.11]

We received comments from the FCC and six other commenters asking that we remove or revise certain disclosures made in the annual report to shareholders. Specifically, the commenters asked that we remove the requirements in § 620.5(i) to disclose the number of days served by a director and travel expense reimbursements in annual reports. Commenters also asked that we replace requirements in § 620.11(b) to account for business combinations with ones that follow GAAP, arguing that pooling of interests is no longer permitted under GAAP. They also asked that we change the language of § 620.11(b)(6) to clarify whose statement, the accountant or management, is to be included as an exhibit. We proposed no changes to these sections. Because the comments are outside the scope of this rulemaking, we are not making any changes in response to them. We will, however, address any such future comments when applicable to other rulemaking.

5. Accounting for Loan Losses

[§ 621.5(a)]

We received comments from the FCC and six other commenters asking that we revise the requirement in § 621.5(a) on the allowance for loan losses. The commenters asked us to revise the regulation to specifically require that the institutions' allowance for loan losses shall be maintained in accordance with GAAP. We proposed no changes to this section. Because the comments are outside the scope of this rulemaking, we are not making any changes in response to the comments. We also direct the commenters to existing § 621.3 instructing institutions to follow GAAP. This is further elaborated on in our April 26, 2004 Bookletter, ''Adequacy of Farm Credit System Institutions'' Allowance for Loan Losses and Risk Funds'' (BL–049), where we explain that § 621.5(a) provides broad guidance in this area. Throughout BL–049, we reinforce the position that a System institution's allowance for loan losses should be maintained in accordance with GAAP.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 619

Agriculture, Banks, banking, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 621

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 624

Accounting, Agriculture, Banks, banking, Rural areas.

12 CFR Part 627

Agriculture, Banks, banking, Claims, Rural areas.

12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

■ For the reasons stated in the preamble, parts 611, 619, 620, 621, 624, 627 and 630 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.21, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2012, 2021, 2071, 2072, 2091, 2092, 2121, 2123, 2142, 2183, 2184, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart P—Termination of System Institution Status

§ 611.1250 [Amended]

■ 2. Amend paragraphs (a)(3) and (b)(4) of § 611.1250 by removing the words '', as defined in § 621.2(i) of this chapter'' from the end of the second sentence.

§ 611.1255 [Amended]

■ 3. Amend paragraphs (a)(3) and (b)(4) of § 611.1255 by removing the words '', as defined in § 621.2(i) of this chapter'' from the end of the second sentence.

PART 619—DEFINITIONS

■ 4. The authority citation for part 619 is revised to read as follows:

Authority: Secs. 1.4, 1.7, 2.1, 2.4, 2.11, 3.2, 3.21, 4.9, 5.9, 5.12, 5.17, 5.18, 5.19, 6.22, 7.0,

7.1, 7.6, 7.8, 7.12 of the Farm Credit Act (12 U.S.C. 2011, 2015, 2072, 2075, 2092, 2123, 2142, 2160, 2243, 2244, 2252, 2253, 2254, 2278b–2, 2279a, 2279a–1, 2279b, 2279b–2, 2279f).

■ 5. Amend part 619 by adding a new § 619.9270 to read as follows:

§ 619.9270 Qualified Public Accountant or External Auditor.

A qualified public accountant or external auditor is a person who:

(a) Holds a valid and unrevoked certificate, issued to such person by a legally constituted State authority, identifying such person as a certified public accountant;

(b) Is licensed to practice as a public accountant by an appropriate regulatory authority of a State or other political subdivision of the United States;

(c) Is in good standing as a certified and licensed public accountant under the laws of the State or other political subdivision of the United States in which is located the home office or corporate office of the institution that is to be audited;

(d) Is not suspended or otherwise barred from practice as an accountant or public accountant before the Securities and Exchange Commission (SEC) or any other appropriate Federal or State regulatory authority; and

(e) Is independent of the institution that is to be audited. For the purposes of this definition the term ''independent'' has the same meaning as under the rules and interpretations of the American Institute of Certified Public Accountants (AICPA). At a minimum, an accountant hired to audit a System institution is not independent if he or she functions in the role of management, audits his or her own work, or serves in an advocacy role for the institution.

PART 620—DISCLOSURE TO SHAREHOLDERS

■ 6. The authority citation for part 620 is revised to read as follows:

Authority: Secs. 4.19, 5.9, 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2207, 2243, 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 100 Stat. 1568, 1656.

Subpart A—General

■ 7. Amend § 620.2 as follows:

■ a. Remove paragraphs (b) and (c);

■ b. Add new paragraph (b);

■ c. Redesignate paragraphs (d) through (j) as paragraphs (c) through (i), consecutively; and

■ d. Revise paragraphs (a) and newly redesignated paragraph (c).

§ 620.2 Preparing and filing the reports.

For the purposes of this part, the following shall apply:

(a) Copies of each report required by this part, including financial statements and related schedules, exhibits, and all other papers and documents that are a part of the report, must be sent to the Farm Credit Administration according to our instructions. Submissions must comply with the requirements of § 620.3 of this part. The Farm Credit Administration must receive the report within the period prescribed under applicable subpart sections.

(b) The reports must be available for public inspection at the issuing institution and the Farm Credit Administration office with which the reports are filed. Farm Credit bank reports must also be available for public inspection at each related association's office(s).

(c) The reports sent to shareholders must comply with the requirements of § 620.3 of this part. Shareholders must agree to electronic disclosures of reports required by this part.

* * * * *

■ 8. Revise § 620.3 to read as follows:

§ 620.3 Accuracy of reports and assessment of internal control over financial reporting.

(a) *Prohibition against incomplete, inaccurate, or misleading disclosures.* No institution and no employee, officer, director, or nominee for director of the institution shall make any disclosure to shareholders or the general public concerning any matter required to be disclosed by this part that is incomplete, inaccurate, or misleading. When any such person makes disclosure that, in the judgment of the Farm Credit Administration, is incomplete, inaccurate, or misleading, whether or not such disclosure is made in disclosure statements required by this part, such institution or person shall make such additional or corrective disclosure as is necessary to provide shareholders and the general public with a full and fair disclosure.

(b) *Signatures.* The name and position title of each person signing the report must be printed beneath his or her signature. If any person required to sign the report has not signed the report, the name and position title of the individual and the reason(s) such individual is unable or refuses to sign must be disclosed in the report. All reports must be dated and signed on behalf of the institution by:

(1) The chief executive officer (CEO);

(2) The chief financial officer (CFO), or if the institution has no CFO, the officer responsible for preparing financial reports; and

(3) A board member formally designated by action of the board to certify reports of condition and performance on behalf of individual board members.

(c) *Certification of financial accuracy.* The report must be certified as financially accurate by the signatories to the report. If any signatory is unable to, or refuses to, certify the report, the institution must disclose the individual's name and position title and the reason(s) such individual is unable or refuses to certify the report. At a minimum, the certification must include a statement that:

(1) The signatories have reviewed the report,

(2) The report has been prepared in accordance with all applicable statutory or regulatory requirements, and

(3) The information is true, accurate, and complete to the best of signatories' knowledge and belief.

(d) *Management assessment of internal control over financial reporting.* Annual reports of those institutions with over $1 billion in total assets (as of the end of the prior fiscal year) must include a report by management assessing the effectiveness of the institution's internal control over financial reporting. The assessment must be conducted during the reporting period and be reported to the institution's board of directors. Quarterly and annual reports for those institutions with over $1 billion in total assets (as of the end of the prior fiscal year) must disclose any material change(s) in the internal control over financial reporting occurring during the reporting period.

Subpart B—Annual Report to Shareholders

§ 620.4 [Amended]

■ 9. Amend § 620.4(a) by removing the word ''shall'' and adding in its place the word ''must''; and by removing the reference ''90'' and adding in its place the reference ''75 calendar''.

■ 10. Amend § 620.5 as follows:

■ a. Remove the word ''shall'' and add in its place, the word ''must'' in the introductory text to § 620.5 and in paragraph (a) introductory text;

■ b. Remove the last sentence in paragraphs (b) and (c)(1);

■ c. Add the words '', if material'' at the end of paragraph (f) introductory text;

■ d. Add the word ''material'' before the word ''participation'' in paragraph (g)(1)(iii)(A);

■ e. Remove the words ''to absorb the risk inherent in the institution's loan

portfolio'' at the end of paragraph (g)(1)(iv)(B);

■ f. Add the word ''material'' before the word ''obligations'' and before the word ''contributions'' in the first sentence of paragraph (g)(1)(iv)(E) and remove the words ''pursuant to section 8.7 of the Act'' at the end of the first sentence;

■ g. Revise paragraph (l); and

■ h. Remove the words '', as defined in § 621.2(i) of this chapter,'' in paragraph (m)(1); remove existing paragraph (m)(2) and redesignate paragraph (m)(3) as new paragraph (m)(2).

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(l) *Relationship with qualified public accountant.*

(1) If a change or changes in qualified public accountants have taken place since the last annual report to shareholders or if a disagreement with a qualified public accountant has occurred that the institution would be required to report to the Farm Credit Administration under part 621 of this chapter, the information required by § 621.4(c) and (d) of this chapter must be disclosed.

(2) Disclose the total fees, by the category of services provided, paid during the reporting period to the qualified public accountant. At a minimum, identify fees paid for audit services, tax services, and non-audit related services. The types of non-audit services must be identified and indicate audit committee approval of the services.

* * * * *

Subpart C—Quarterly Report

§ 620.10 [Amended]

■ 11. Amend § 620.10(a) by removing the word ''shall'' and adding in its place the word ''must'' and by removing the reference ''45'' and adding in its place the reference ''40 calendar''.

Subpart F—Bank and Association Audit and Compensation Committees

■ 12. Amend § 620.30 by revising paragraph (d)(2) to read as follows:

§ 620.30 Audit committees.

(d) * * *

(2) *External auditors.* The external auditor must report directly to the audit committee. Each audit committee must:

(i) Determine the appointment, compensation, and retention of external auditors issuing audit reports of the institution;

(ii) Review the external auditor's work;

(iii) Give prior approval for any non-audit services performed by the external auditor, except the audit committee may not approve those non-audit services specifically prohibited by FCA regulation; and

(iv) Comply with the auditor independence provisions of part 621 of this chapter.

* * * * *

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

■ 13. The authority citation for part 621 is revised to read as follows:

Authority: Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11); sec. 514 of Pub. L. 102–552.

Subpart A—Purpose and Definitions

§ 621.2 [Amended]

■ 14. Amend § 621.2 by removing paragraph (i) and redesignating existing paragraph (j) as newly designated paragraph (i).

Subpart B—General Rules

■ 15. Amend § 621.4 by revising paragraph (b) to read as follows:

§ 621.4 Audit by qualified public accountant.

* * * * *

(b) The qualified public accountant's opinion of each institution's financial statements must be included as a part of each annual report to shareholders. The accountant must comply with the auditor independence provisions of subpart E of this part.

* * * * *

■ 16. Add a new subpart E, consisting of §§ 621.30, 621.31, and 621.32, to read as follows:

Subpart E—Auditor Independence

Sec.

621.30 General.

621.31 Non-audit services.

621.32 Conflicts of interest and rotation.

Subpart E—Auditor Independence

§ 621.30 General.

Each Farm Credit institution must ensure the independence of all qualified public accountants conducting the institution's audit by establishing and maintaining policies and procedures governing the engagement of external auditors. The policies and procedures must incorporate the provisions of this subpart and § 612.2260 of this chapter.

§ 621.31 Non-audit services.

Non-audit services are any professional services provided by a qualified public accountant during the period of an audit engagement which are not connected to an audit or review of an institution's financial statements.

(a) A qualified public accountant engaged to conduct a Farm Credit institution's audit may not perform the following non-audit services for that institution:

(1) Bookkeeping,

(2) Financial information systems design,

(3) Appraisal and valuation services,

(4) Actuarial services,

(5) Internal audit outsourcing services,

(6) Management or human resources functions,

(7) Legal and expert services unrelated to the audit, and

(8) Advocating an institution's interests in litigation, regulatory or administrative investigations and proceedings unrelated to external audit work.

(b) A qualified public accountant engaged to conduct a Farm Credit institution's audit may only perform non-audit services, not otherwise prohibited in this section, if the institution's audit committee pre-approves the services and the services are fully disclosed in the annual report.

§ 621.32 Conflicts of interest and rotation.

(a) *Conflicts of interest.* (1) A Farm Credit institution may not engage a qualified public accountant to conduct the institution's audit if the accountant uses a partner, concurring partner, or lead member in the audit engagement team who was a director, officer or employee of the Farm Credit institution within the past year.

(2) A Farm Credit institution may not make an employment offer to a partner, concurring partner, or lead member serving on the institution's audit engagement team during the audit or within 1 year of the conclusion of the audit engagement.

(b) *Rotation.* Each institution may engage the same lead and reviewing audit partners of a qualified public accountant to conduct the institution's audit for no more than 5 consecutive years. The institution must then require the lead and reviewing audit partners assigned to the institution's audit team to rotate out of the audit team for 5 years. At the end of 5 years, the institution may again engage the audit services of those lead and reviewing audit partners.

PART 624—[REMOVED AND RESERVED]

■ 17. Remove and reserve part 624.

PART 627—TITLE IV CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

■ 18. The authority citation for part 627 continues to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58, 5.61 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7, 2277a–10).

Subpart C—Conservators and Conservatorships

■ 19. Amend § 627.2785 by revising paragraphs (b) and (d) to read as follows:

§ 627.2785 Inventory, examination, audit, and reports to stockholders.

* * * * *

(b) The institution in conservatorship shall be examined by the Farm Credit Administration in accordance with section 5.19 of the Act. The institution must also be audited by a qualified public accountant in accordance with part 621 of this chapter.

* * * * *

(d) Each institution in conservatorship must prepare and issue published financial reports in accordance with the provisions of part 620 of this chapter, and the certifications and signatures of the board of directors or management provided for in § 620.3 of this chapter must be provided by the conservator of the institution.

PART 630—DISCLOSURE TO INVESTORS IN SYSTEM-WIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

■ 20. The authority citation for part 630 continues to read as follows:

Authority: Secs. 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2252, 2254).

Subpart A—General

■ 21. Amend § 630.2 by revising paragraph (c) to read as follows:

§ 630.2 Definitions.

* * * * *

(c) *Disclosure entity* means any Farm Credit bank and the Federal Farm Credit Banks Funding Corporation (Funding Corporation).

* * * * *

■ 22. Amend § 630.3 by revising paragraphs (a), (f) and (h) as follows:

§ 630.3 Publishing and filing the report to investors.

(a) The disclosure entities shall jointly publish the following reports in order to provide meaningful information pertaining to the financial condition and results of operations of the System to investors and potential investors in FCS debt obligations and other users of the report:

(1) An annual report to investors within 75 calendar days after the end of each fiscal year;

(2) A quarterly report to investors within 45 calendar days after the end of each quarter, except for the quarter that coincides with the end of the fiscal year.

(3) Interim reports, as required by the Funding Corporation's written policies and procedures, disclosing significant events or material changes in information occurring since the most recently published report to investors.

* * * * *

(f) Information in documents prepared for investors in connection with the offering of debt securities issued through the Funding Corporation may be incorporated by reference in the annual and quarterly reports in answer or partial answer to any item required in the reports under this part. A complete description of any offering documents incorporated by reference must be clearly identified in the report (e.g., Federal Farm Credit Banks Consolidated System-wide Bonds and Discount Notes—Offering Circular issued on [insert date]). Offering documents incorporated by reference in either an annual or quarterly report prepared under this part must be filed with the Farm Credit Administration according to our instructions either prior to or at the time of submission of the report under paragraph (h) of this section. Any offering document incorporated by reference is subject to the delivery and availability requirements set forth in § 630.4(a)(5) and (a)(6).

* * * * *

(h) Complete copies of the report must be filed with the Farm Credit Administration according to our instructions. All copies must comply with the requirements of § 630.5 of this part.

■ 23. Amend § 630.4 as follows:

■ a. Revise paragraph (a)(4);

■ b. Remove paragraph (b);

■ c. Redesignate paragraphs (c) and (d) as (b) and (c);

■ d. Revise newly redesignated paragraphs (b)(4), (b)(5), and (c).

§ 630.4 Responsibilities for preparing the report to investors.

(a) * * *

(4) File the reports with the FCA in accordance with § 630.3(f) and (h) and § 630.5.

* * * * *

(b) * * *

(4) Respond to inquiries from the Funding Corporation relating to preparation of the report.

(5) Certify to the Funding Corporation that all information needed for preparation of the report to investors has been submitted in accordance with the instructions of the Funding Corporation and the information submitted complies with the signature and certification provisions of § 620.3(b) and (c), respectively.

(c) *Responsibilities of associatios.* Each association must:

(1) Provide its related bank with the information necessary to allow the bank to provide accurate and complete information regarding the bank and its related associations to the Funding Corporation for preparation of the report. The financial information provided by the association to its related bank must be signed and certified in the same manner as provided in § 620.3(b) and (c), respectively.

(2) Respond to inquiries of the related bank pertaining to preparation of the combined financial data of the association and its related bank.

■ 24. Revise § 630.5 to read as follows:

§ 630.5 Accuracy of reports and assessment of internal control over financial reporting.

(a) *Prohibition against incomplete, inaccurate, or misleading disclosure.* Neither the Funding Corporation, nor any institution supplying information to the Funding Corporation under this part, nor any employee, officer, director, or nominee for director of the Funding Corporation or of such institutions, shall make or cause to be made any disclosure to investors and the general public required by this part that is incomplete, inaccurate, or misleading. When any such institution or person makes or causes to be made disclosure under this part that, in the judgment of the FCA, is incomplete, inaccurate, or misleading, whether or not such disclosure is made in published statements required by this part, such institution or person shall promptly furnish to the Funding Corporation, and the Funding Corporation shall promptly publish, such additional or corrective disclosure as is necessary to provide full and fair disclosure to investors and the general public. Nothing in this section shall prevent the FCA from taking additional actions to enforce this section pursuant to its authority under title V, part C of the Act.

(b) *Signatures.* The name and position title of each person signing the report must be printed beneath his or her signature. If any person required to sign

the report has not signed the report, the name and position title of the individual and the reasons such individual is unable to, or refuses to, sign must be disclosed in the report. All reports must be dated and signed on behalf of the Funding Corporation by:

(1) The chief executive officer (CEO);

(2) The officer in charge of preparing financial statements; and

(3) A board member formally designated by action of the board to certify reports of condition and performance on behalf of individual board members.

(c) *Certification of financial accuracy.* The report must be certified as financially accurate by the signatories to the report. If any signatory is unable to, or refuses to, certify the report, the institution must disclose the individual's name and position title and the reason(s) such individual is unable or refuses to certify the report. At a minimum, the certification must include a statement that:

(1) The signatories have reviewed the report,

(2) The report has been prepared in accordance with all applicable statutory or regulatory requirements, and

(3) The information is true, accurate, and complete to the best of signatories' knowledge and belief.

(d) *Management assessment of internal control over financial reporting.* (1) Annual reports must include a report by the Funding Corporation's management assessing the effectiveness of the internal control over financial reporting for the System-wide report to investors. The assessment must be conducted during the reporting period and be reported to the Funding Corporation's board of directors. Quarterly and annual reports must disclose any material change(s) in the internal control over financial reporting occurring during the reporting period.

(2) The Funding Corporation must require its external auditor to review, attest, and report on management's assessment of internal control over financial reporting. The resulting attestation report must accompany management's assessment and be included in the annual report.

■ 25. Amend § 630.6 by revising paragraph (a)(4)(ii) to read as follows:

§ 630.6 Funding Corporation committees.

(a) * * *

(4) * * *

(ii) *External auditors.* The external auditor must report directly to the SAC. The SAC must:

(A) Determine the appointment, compensation, and retention of external auditors issuing System-wide audit reports;

(B) Review the external auditor's work;

(C) Give prior approval for any non-audit services performed by the external auditor, except the audit committee may not approve those non-audit services specifically prohibited by FCA regulation; and

(D) Comply with the auditor independence provisions of part 621 of this chapter.

* * * * *

Subpart B—Annual Report to Investors

■ 26. Amend § 630.20 as follows:

■ a. Remove paragraph (b)(3);

■ b. Remove paragraph (m)(2)(iii);

■ c. Redesignate paragraphs (m)(2)(iv) through (vi) as paragraphs (m)(2)(iii) through (v); and

■ d. Revise the introductory text, paragraphs (f) introductory text, (h)(1), (i), (k), and (l) introductory text to read as follows:

§ 630.20 Contents of the annual report to investors.

The annual report must contain the following:

* * * * *

(f) *Selected financial data.* At a minimum, furnish the following combined financial data of the System in comparative columnar form for each of the last 5 fiscal years, if material.

* * * * *

(h) *Directors and management.*

(1) *Board of directors.* Briefly describe the composition of boards of directors of the disclosure entities. List the name of each director of such entities, including the director's term of office and principal occupation during the past 5 years, or state that such information is available upon request.

(2) * * *

(i) *Compensation of directors and senior officers.* State that information on the compensation of directors and senior officers of Farm Credit banks is contained in each bank's annual report to shareholders and that the annual report of each bank is available to investors upon request pursuant to § 630.3(g).

* * * * *

(k) *Relationship with qualified public accountant.*

(1) If a change in the qualified public accountant who has previously examined and expressed an opinion on the System-wide combined financial statements has taken place since the last annual report to investors or if a disagreement with a qualified public accountant has occurred that the Funding Corporation would be required to report to the FCA under part 621 of this chapter, disclose the information required by § 621.4(c) and (d).

(2) Disclose the total fees paid during the reporting period to the qualified public accountant by the category of services provided. At a minimum, identify fees paid for audit services, tax services, and non-audit services. The types of non-audit services must be identified and indicate audit committee approval of the services.

(l) *Financial statements.* Furnish System-wide combined financial statements and related footnotes prepared in accordance with GAAP, and accompanied by supplemental information prepared in accordance with the requirements of § 630.20(m). The System-wide combined financial statements shall provide investors and potential investors in FCS debt obligations with the most meaningful presentation pertaining to the financial condition and results of operations of the System. The System-wide combined financial statement and accompanying supplemental information shall be audited in accordance with generally accepted auditing standards by a qualified public accountant. The System-wide combined financial statements shall include the following:

* * * * *

Dated: December 12, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E6–21529 Filed 12–19–06; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

RIN 3133–AD27

Permissible Investments for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its investments rule to allow federal credit unions (FCUs) to enter into investment repurchase transactions in which the instrument consists of first-lien mortgage notes subject to certain limitations. The final rule expands FCU authority to invest in mortgage-related securities while addressing safety and soundness concerns associated with this new investment activity.

DATES: This rule is effective January 19, 2007.

FOR FURTHER INFORMATION CONTACT:
Technical Information: Jeremy Taylor, Senior Investments Officer, Office of Capital Markets and Planning, at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, or telephone: (703) 518–6620.
Legal Information: Moisette Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In July 2006, NCUA proposed to amend its investment rules in Part 703 to permit FCUs to engage in investment repurchase transactions in which the underlying instruments are mortgage notes evidenced by participation or trust receipts. 71 FR 42326 (July 26, 2006). The preamble to the proposed rule discussed the statutory authority, its legislative history, and NCUA regulatory implementation regarding FCU investment in mortgage-backed and mortgage-related securities. The Federal Credit Union Act (Act) permits FCUs to invest in securities offered and sold pursuant to section 4(5) of the Securities Act of 1933. 12 U.S.C. 1757(15)(A); 15 U.S.C. 77d(5). The Board had limited this authority by regulation under the eligible obligations rule so that FCUs could only purchase the mortgage notes of its members or those needed to complete a pool of loans to be sold on the secondary market. 12 CFR 701.23. The proposal to amend § 703.14 to permit mortgage note repurchase transactions contained six conditions to address safety and soundness concerns including a credit concentration limit, minimum credit rating, independent assessment of market value, maximum transaction term, custodial requirements, and undivided interests in mortgage notes. NCUA issued the proposed rule with a 60-day comment period and requested comments on the plan to expand FCU investment authority, the conditions in the proposed rule, and whether a regulation permitting mortgage note repurchase transactions should contain additional criteria.

B. Public Comments and the Final Rule

NCUA received comments from three credit unions, three trade associations, and one investment advisor on the proposed rule. Two commenters agreed with the use of independent, qualified agents to assess the market value of the mortgage notes and the requirements for undivided interests in the mortgage notes. Five commenters believed tri-party custodial arrangements would sufficiently identify the underlying loans in a mortgage note repurchase transaction. Four commenters stated the rule needed no additional underwriting criteria because the definition of the permissible securities in § 107(15)(A) includes the required criteria. Relying on reasons similar to those in the comments regarding underwriting criteria, five commenters contended the rule should not address the quality of the mortgage notes in repurchase transactions. All the commenters objected to the concentration limits, credit rating requirements, and maximum transaction term. The NCUA Board has considered carefully the three objections to the proposed rule.

Concentration Limits

The proposed rule contained concentration limits of no more than 25% of a participating FCU's net worth with any one counterparty and 100% of its net worth with all counterparties. Commenters stated the proposed concentration limits are too restrictive. One commenter suggested the limits should be 50% of net worth per counterparty and a total limit similar to the FCU borrowing limit in § 107(9) of the Act, i.e., 50% of paid-in and unimpaired capital and surplus. *See* 12 U.S.C. 1757(9). Two others stated the existing requirements for investment repurchase transactions in Part 703 are sufficient and no additional limits are necessary for mortgage note repurchase transactions, unless an FCU's directors establishes them.

NCUA investment rules currently require directors to develop investment policies that outline how FCUs will manage credit risk, including what counterparties an FCU will use, criteria for their selection, and the limits for investments with each counterparty. 12 CFR 703.3. Additionally, § 703.13(c) permits FCUs to enter into investment repurchase transactions so long as the underlying securities are permissible investments, and the investing FCU takes possession or is the recorded owner of the security, receives a daily assessment of the securities' market value, maintains adequate margins that reflect the risk and term of the transaction, and enters into signed contracts with the approved counterparties. The Board recognizes there is no concentration limit for investment repurchase agreements under § 703.13(c). These repurchase transactions involve permissible investments that are of high credit quality, for example, U.S. government securities, investment grade rated municipals, AA and AAA mortgage related securities, and securities issued or guaranteed by GSEs. In contrast, mortgage note repurchase agreements involve unrated mortgage notes.

Additionally, the securities involved in § 701.13(c) investment repurchase transactions typically have an active bid-ask market. Mortgage notes do not have an active bid-ask market, although the fair value of the mortgage notes may be estimated with reasonable accuracy. Thus, while the Board is comfortable that credit unions can set prudential margin requirements, mortgage notes may have less liquidity than other securities involved in repurchase transactions. Moreover, the Board notes the Office of the Comptroller of the Currency limits mortgage notes to no more than 25% of capital. *See* 12 U.S.C. 84(a)(2), (c)(4); 12 CFR 32.2(k)91)(iii), (n); 12 CFR 32.3.

Thus, the Board having fully considered the comments on this issue has determined to maintain the concentration limits as proposed because it believes a 25% concentration limit per counterparty is no more restrictive than the limit for national banks and maintains this and the 100% limit for purposes of safety and soundness.

Credit Rating Requirement

Commenters also objected to the proposed requirement that the counterparty to a mortgage note repurchase agreement have a long-term credit rating no lower than A – (or its equivalent). While mortgage note repurchase transactions generally have a short term, parties may rollover the transactions and enter into subsequent transactions, thereby creating a longer term of exposure to the counterparty. It is prudent to review the long-term rating of debt issued by the counterparty when rolling over repurchase transactions. Economically, the credit exposure in a mortgage note repurchase transaction may be somewhat similar to an investment grade asset-backed security (ABS) if debt of the issuing entity has been rated investment grade or if the mortgage note is guaranteed by an entity with investment grade debt. There is a distinction, however, in that an investment grade ABS is in and of itself highly rated, and the participant is relying on a credit rating of debt that is not applicable to the mortgage note as an indicator of the likelihood of default of the counterparty. Thus, the Board reasons that single A – (the third highest of the four long-term investment grades), rather than BBB – (the lowest category of investment grade), is a prudent and appropriate safety and soundness standard.

While the final rule retains the requirement for long- and short-term

credit ratings as in the proposed rule, the final rule modifies the requirement by allowing a third party, that has the required credit rating, to fully guarantee the mortgage note repurchase transaction of a counterparty that does not meet the requirement. This modification reflects market practice in which a parent company guarantees mortgage note repurchase transactions of its subsidiary. Accordingly, the final rule requires a counterparty to have acceptably rated debt or that a party with acceptably rated debt guarantee the transaction.

Maximum Transaction Term

Finally, commenters contended that the maximum term of a mortgage note repurchase transaction should be longer than, as proposed, 30 days. Commenters pointed out investors in the current market have kept repurchase agreements short due to the uncertain interest rate environment and abnormal yield curve. Commenters stated the market to finance whole loans traditionally mirrors the overall holding period of 45 to 90 days for securitization. Additionally, commenters believe the concentration limits and credit quality of the counterparty are sufficient safeguards given the aggregate size of mortgage note repurchase transactions. The Board is persuaded that a 90-day transaction is consistent with market practice and creates no additional safety and soundness risks. Therefore, the maximum transaction term in the final rule is modified to 90 days.

While this final rule amends § 703.14 to create additional requirements for investment repurchase transactions when mortgage notes are the underlying instruments, FCUs must still comply with the requirements of § 703.13(c). For instance, an FCU must obtain the daily assessment required under § 703.13(c)(1). In addition, FCUs investing in mortgage note repurchase transactions must maintain adequate margins that reflect a risk assessment of the mortgage notes and the term of the transactions under § 703.13(c)(1).

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities, those credit unions with less than ten million dollars in assets. The proposed rule involves the permissibility of certain investment repurchase transactions for FCUs and is grounded in NCUA concerns about the safety and soundness of the transactions and their potential effects on FCUs and the NCUSIF. Accordingly, the Board determines and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the APA. 5 U.S.C. 551. NCUA has requested a SBREFA determination from the Office of Management and Budget, which is pending. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 703

Credit unions, Investments, Repurchase transactions.

By the National Credit Union Administration Board on December 14, 2006.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 703 as set forth below:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 1. The authority citation for part 703 is continues to read:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

■ 2. Amend § 703.1 by revising paragraph (b)(2) to read as follows:

§ 703.1 Purpose and scope.

* * * * *

(b) * * *

(2) The purchase of real estate-secured loans pursuant to Section 107(15)(A) of the Act, which is governed by § 701.23 of this chapter, except those real estate-secured loans purchased as a part of an investment repurchase transaction, which is governed by §§ 703.13 and 703.14 of this chapter;

* * * * *

■ 3. Amend § 703.2 by adding the definition of ''independent qualified agent'' alphabetically to read as follows:

§ 703.2 Definitions.

* * * * *

Independent qualified agent means an agent independent of an investment repurchase counterparty that does not receive a transaction fee from the counterparty and has at least two years experience assessing the value of mortgage loans.

* * * * *

■ 4. Amend § 703.14 by adding new paragraph (h) to read as follows:

§ 703.14 Permissible investments.

* * * * *

(h) *Mortgage note repurchase transactions.* A federal credit union may invest in securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), only as a part of an investment repurchase agreement under § 703.13(c), subject to the following conditions:

(1) The aggregate of the investments with any one counterparty is limited to 25 percent of the credit union's net worth and 100 percent of its net worth with all counterparties;

(2) At the time a federal credit union purchases the securities, the

counterparty, or a party fully guaranteeing the transaction, must have outstanding debt with a long-term rating no lower than A – or its equivalent and outstanding debt with a short-term rating, if any, no lower than A–1 or its equivalent;

(3) The federal credit union must obtain a daily assessment of the market value of the securities under § 703.13(c)(1) using an independent qualified agent;

(4) The mortgage note repurchase transaction is limited to a maximum term of 90 days;

(5) All mortgage note repurchase transactions will be conducted under tri-party custodial agreements; and

(6) A federal credit union must obtain an undivided interest in the securities.

[FR Doc. E6–21662 Filed 12–19–06; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2005–22680; Airspace Docket No. 05–ASW–3]

RIN 2120–AA66

Establishment of Restricted Area 5601F; Fort Sill, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area 5601F (R–5601F) over Fort Sill, OK. The United States (U.S.) Army requested that the FAA take action to establish R–5601F to provide additional airspace needed to support new high angle air-to-ground training requirements for Air Force, Navy, and Marine aircraft operating over the Falcon Bombing Range and to enhance Fort Sill's ability to host joint training.

DATES: *Effective Date:* 0901 UTC, March 15, 2007.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish R–5601F in response to a request from the U.S. Army (70 FR 66306). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Five comments were received.

Discussion of Comments

The commenters included the Aircraft Owners and Pilots Association (AOPA), the Oklahoma Pilots Association (OPA), and three individuals. The following is a summary of those comments and the FAA's responses:

Three commenters expressed a concern that R–5601F would harm the Wichita Mountain Wildlife Refuge and Lake Latonka.

Response: The FAA disagrees that R–5601F would cause significant harm to these areas because R–5601F would be a narrow piece of airspace (typically less than 3–4 miles from north to south) and the Army agreed to restrict flight to 5,500 feet mean sea level and above, over the Wildlife Refuge, to mitigate adverse impacts. We also note that the Wildlife Manager of the Wichita Mountain Wildlife Refuge had no objections to the establishment of R–5601F as outlined in the draft environmental assessment that was later adopted.

Two commenters stated that R–5601F should not be designated as a restricted area because the activity would not constitute ''a hazard to non-participating aircraft'' as required by FAA Order 7400.2E.

Response: FAA Order 7400.2F, Procedures for Handling Airspace Matters (effective on February 16, 2006) supercedes FAA Order 7400.2E. Both versions specify that the purpose of a restricted area is to confine or segregate activities considered hazardous to nonparticipating aircraft. The FAA believes it is appropriate to designate the needed maneuvering area as a restricted area because the participating aircraft will be maneuvering with armed weapons while preparing to drop and/or fire on the target areas. This activity constitutes a hazard and must be conducted within restricted airspace.

Two commenters stated that there currently is not enough activity at Fort Sill to justify a need for additional restricted airspace.

Response: R–5601F would provide the maneuvering airspace needed to safely execute new high angle air-to-ground training requirements for Air Force, Navy, and Marine aircraft.

One commenter expressed a concern that the proposed R–5061F would ''negatively impact general aviation by closing one of the last VFR corridors left in southern Oklahoma'' and one other commenter stated that the proposed restricted area would restrict air tours over the Wichita Mountain National Wildlife Refuge and Lake Latonka.

Response: The FAA believes that the impact would be minimal because the Army plans to use the airspace less than 6 hours per day. Also, nonparticipating aircraft will have the opportunity to fly through the area when the airspace is not in use and may contact Fort Sill Approach for the status of R–5601F.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 73 to establish R–5601F adjacent to and north of R–5601B and R–5601C. Establishment of the new restricted area will provide additional airspace needed to support new high angle air-to-ground training requirements for Air Force, Navy, and Marine aircraft operating over the Falcon Bombing Range and will enhance Fort Sill's ability to host joint training.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

On October 4, 2006, the FAA adopted the U.S. Army's Finding of No Significant Impact and Record of Decision for the establishment of R–5601F.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.56 [Amended]

■ 2. § 73.56 is amended as follows:

* * * * *

R–5601F Fort Sill, OK [New]

Boundaries. Beginning at lat. 34°46′24″ N., long. 98°52′00″ W.; thence clockwise via the 49 NM arc of SPS VORTAC to lat. 34°47′00″ N., long. 98°51′00″ W.; to lat. 34°43′46″ N., long. 98°49′55″ W.; thence clockwise via the 46 NM arc of SPS VORTAC to lat. 34°45′03″ N., long. 98°29′46″ W.; to lat. 34°46′15″ N., long. 98°25′01″ W.; to lat. 34°47′00″ N., long. 98°17′46″ W.; to lat. 34°46′45″ N., long. 98°17′01″ W.; to lat. 34°46′06″ N., long. 98°17′01″ W.; to lat. 34°46′06″ N., long. 98°21′01″ W.; to lat. 34°43′45″ N., long. 98°21′01″ W.; to lat. 34°43′30″ N., long. 98°21′21″ W.; to lat. 34°43′30″ N., long. 98°35′40″ W.; to lat. 34°45′00″ N., long. 98°40′31″ W.; to lat. 34°42′15″ N., long. 98°50′01″ W.; to the point of beginning. Excluding that airspace: (1) below 5500 feet MSL beginning at lat. 34°44′28″ N., long. 98°46′16″ W.; thence clockwise via the 46 NM arc of SPS VORTAC to lat. 34°45′09″ N., long. 98°30′57″ W.; to lat. 34°43′30″ N., long. 98°30′00″ W.; to lat. 34°43′30″ N., long. 98°35′40″ W.; to lat. 34°45′00″ N., long. 98°40′31″ W.; to lat. 34°43′09″ N., long. 98°46′56″ W.; to the point of beginning; and, (2) below 3500 feet MSL within a 1 NM radius of lat. 34°46′46″ N., long. 98°17′46″ W.

Designated altitudes. 500 feet AGL to FL 400.

Times of Designation. Sunrise to 2200 local time, Monday–Friday; other times by NOTAM.

Controlling Agency. FAA, Fort Worth ARTCC.

Using Agency. Commanding General, United States Army Field Artillery Center (USAFACFS), Fort Sill, OK.

* * * * *

Issued in Washington, DC, December 14, 2006.

Paul Gallant,

Acting Manager, Airspace and Rules.

[FR Doc. E6–21725 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 366 and 385

[Docket No. RM06–25–000; Order No. 685]

Electronic Filing of FERC Form No. 60; Notice Providing Detail on FERC Form 60 Software Availability for Electronic Filing

December 13, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule: Notice Providing Detail on Software Availability.

SUMMARY: On October 19, 2006, the Federal Energy Regulatory Commission issued Order No. 685 which instructed all centralized service companies to file the currently-effective FERC Form No. 60 using form submission software. (71 FR 65049, November 7, 2006). By this notice, the Commission is providing detail on FERC Form 60 software availability for electronic filing.

DATES: Effective Date: January 7, 2007.

FOR FURTHER INFORMATION CONTACT: Julia A. Lake (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8370. E-mail: *julia.lake@ferc.gov.*

Michelle Veloso (Technical Information), Division of Financial Regulation, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8363. E-mail: *michelle.veloso@ferc.gov.*

SUPPLEMENTARY INFORMATION:

On December 8, 2005, the Commission issued Order No. 667, requiring among other things that centralized service companies file an annual financial report entitled FERC Form No. 60, Annual Report for Centralized Service Companies (FERC Form No. 60).[1] On October 19, 2006, the Commission issued Order No. 685, instructing all centralized service companies to file the currently-effective FERC Form No. 60 using form submission software beginning with the filings due by May 1, 2007.[2] In that order, the Commission stated that instructions would be provided concerning how a centralized service company may register as a respondent and download the form submission software for use in filing the FERC Form No. 60. This notice provides instructions for obtaining access to the new software.

The FERC Form No. 60 submission software will be available for respondents on the Commission's Web site under eForms by February 5, 2007. No changes are being made to data reported in the currently-effective FERC Form No. 60. However, minor formatting changes were made to facilitate electronic filing. The minor changes include: placing the instructions at the top of each page for each schedule; updating certain schedules so that the data and information is reported in a structured format on the schedule; renumbering certain pages; and updating the General Instructions to clarify that the respondents will be required to use the form submission software to file the form.

Filers of the FERC Form No. 60 will need an identification number to access the form submission software. To obtain an identification number, please e-mail FERC Online Support at *ferconlinesupport@ferc.gov* and include your name, company name, company address, and phone number. If you will file for more than one company, please include the names of all companies in the e-mail. You will receive an identification number for each company by return e-mail. The identification number is critical for the electronic filing of the FERC Form No. 60. For security reasons, identification numbers will not be given out over the phone. The FERC Form No. 60 filing for the calendar year 2006 must be filed electronically no later than May 1, 2007. Submittals made using any other format or media will not be compliant with Order No. 685.

The Commission will conduct beta testing on the FERC Form No. 60 submission software in early January 2007. FERC Form No. 60 filers wishing to participate in beta testing should e-mail *form60_registration@ferc.gov* by December 29, 2006, and provide contact information including company name, company address, phone number, and contact person's e-mail address.

If respondents have questions about how to install or use the FERC Form No. 60 software, they should call toll free at (866) 208–3676 or locally at (202) 502–6652 (or (202) 502–8659 for TTY), or e-mail *ferconlinesupport@ferc.gov* to obtain help.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21617 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Repeal of the Public Utility Holding Company Act of 1935 and the Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006), *order on reh'g*, Order No. 667–B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006).

[2] *Electronic Filing of FERC Form No. 60*, Order No. 685, 71 FR 65049 (Nov. 7, 2006), FERC Stats. & Regs. ¶ 31,230 (2006).

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10 and 191

[CBP Dec. 06–39]

RIN 1505–AB47

United States-Chile Free Trade Agreement

AGENCIES: Customs and Border Protection, Depart of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to title 19 of the Code of Federal Regulations (''CFR'') which were published in the **Federal Register** on March 7, 2005, as CBP Dec. 05–07 to implement the preferential tariff treatment and other customs-related provisions of the United States-Chile Free Trade Agreement signed by the United States and the Republic of Chile.

DATES: Final rule effective January 19, 2007.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Robert Abels, Office of Field Operations, (202) 344–1959.

Other Operational Aspects: Lori Whitehurst, Office of Field Operations, (202) 344–2722.

Audit Aspects: Mark Hanson, Office of Regulatory Audit, (202) 344–2877.

Legal Aspects: Edward Leigh, Office of International Trade, (202) 572–8827.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2003, the United States and the Republic of Chile (the ''Parties'') signed the U.S.-Chile Free Trade Agreement (''US–CFTA''). The provisions of the US–CFTA were adopted by the United States with the enactment of the United States-Chile Free Trade Agreement Implementation Act (the ''Act''), Public Law 108–77, 117 Stat. 909 (19 U.S.C. 3805 note), on September 3, 2003. Section 210 of the Act requires that regulations be prescribed as necessary.

Those customs-related US–CFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Three (National Treatment and Market Access for Goods) and the provisions of Chapter Four (Rules of Origin and Origin Procedures) and Chapter Five (Customs Administration).

The tariff-related provisions within US–CFTA Chapter Three which require regulatory action by CBP are Article 3.7 (Temporary Admission of Goods), Article 3.9 (Goods Re-Entered after Repair or Alteration), and Article 3.20 (Rules of Origin and Related Matters).

Chapter Four of the US–CFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Chile (US–CFTA Party) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as provided for under Article 4.1 and Annex 4.1 of the US–CFTA. Under Article 4.1 within that Chapter, originating goods may be grouped in three broad categories: (1) Goods which are wholly obtained or produced entirely in one or both of the Parties; (2) goods which are produced entirely in one or both of the Parties and which satisfy the specific rules of origin in US–CFTA Annex 4.1 (change in tariff classification requirement and/or regional value content requirement); and (3) goods which are produced entirely in one or both of the Parties exclusively from materials that originate in those countries. Article 4.2 sets forth the methods for calculating the regional value content of a good. Article 4.3 sets forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the *de minimis* rule. Article 4.4 sets forth the rules for determining whether accessories, spare parts, or tools delivered with a good qualify as material used in the production of such good. Article 4.6 provides for accumulation of production by two or more producers. Article 4.7 provides a *de minimis* criterion. The remaining Articles within Section A of Chapter Four consist of additional sub-rules, applicable to the originating good concept, involving fungible materials, packaging materials, packing materials, transshipment, and non-qualifying operations. The basic rules of origin in Chapter Four of the US–CFTA are set forth in General Note 26, Harmonized Tariff Schedule of the United States (HTSUS). In addition, Section B of Chapter Four sets forth the procedural requirements which apply under the US–CFTA, in particular with regard to claims for preferential tariff treatment.

Chapter Five sets forth the customs operational provisions related to the implementation and continued administration of the US–CFTA.

On March 7, 2005, Customs and Border Protection (''CBP'') published CBP Dec. 05–07 in the **Federal Register** (70 FR 10868) setting forth interim amendments to implement the preferential tariff treatment and other customs-related provisions of the US–CFTA. In order to provide transparency and facilitate their use, the majority of the US–CFTA implementing regulations set forth in CBP Dec. 05–07 were included within new Subpart H in Part 10 of title 19 of the Code of Federal Regulations (19 CFR Subpart H, Part 10). However, in those cases in which US–CFTA implementation was more appropriate in the context of an existing regulatory provision, the US–CFTA regulatory text was incorporated in an existing part within the CBP regulations. CBP Dec. 05–07 also set forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new US–CFTA implementing regulations.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on March 7, 2005, CBP Dec. 05–07 provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule, and the prescribed public comment period closed on June 6, 2005. A discussion of the comments received by CBP is set forth below.

Discussion of Comments

A total of three commenters responded to the solicitation of comments on the interim regulations set forth in CBP Dec. 05–07. The comments are discussed below.

Comment:

One commenter stated that §§ 10.412 and 10.415, which concern importer obligations and maintenance of records, respectively, should make clear that importers are required to retain records and documents related to the production of goods for which preferential tariff treatment is claimed only to the extent that they possess such records in the normal course of business. The commenter explained that, in many cases involving unrelated parties, Chilean producers may be unwilling to share their production information and costs with the U.S. importer.

CBP's Response:

CBP recognizes that, under certain circumstances, Chilean producers may be reluctant to provide production information and costs to U.S. importers due to business confidentiality concerns. In these cases, CBP has no objection to the direct submission to the port director of such information from

the exporter or producer. To clarify this point, CBP is amending § 10.412 in this final rule by adding a sentence at the end of paragraph (a) stating that CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information. Regarding § 10.415, CBP notes that paragraph (a) of that section provides, in pertinent part, that an importer claiming preferential tariff treatment must maintain for five years after the date of importation of the good ''* * * any records and documents *that the importer has* relating to the origin of the good * * *.'' [Emphasis added.] CBP submits that the current language of the regulation adequately addresses the commenters's concerns.

Comment:

One commenter noted that §§ 10.441 and 10.442, concerning procedures for the filing and processing of post-importation duty-refund claims, set forth several references to the words ''petition or request for reliquidation.'' The commenter asks whether these references are necessary in view of the fact that 19 U.S.C. 1520(c) was repealed by section 2105 of the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429, 118 Stat. 2434).

CBP's Response:

Section 1520(c), which authorized the reliquidation of an entry under certain circumstances, was repealed effective December 18, 2004 (see § 2108 of the Miscellaneous Trade and Technical Corrections Act of 2004). As a result, CBP agrees with the commenter that the references to ''petition or request for reliquidation'' in §§ 10.441(b)(4) and 10.442(b), (c)(2), and (d)(3) are no longer necessary. These references have been removed in this final rule document.

Comment:

One commenter stated that § 10.455(a)(3), concerning the value of materials, is too broad because ''it would preclude transaction value as the value of a material where the material is provided to the producer at a price reflecting any discount or reduction in price,'' including quantity discounts. [Emphasis by commenter.] The commenter suggested that the wording of this paragraph should parallel the definition of assists in § 152.102(a) of the CBP regulations; *e.g.*, ''In the case of a material provided to the producer free of charge or at reduced cost * * *.''

CBP's Response:

First, CBP assumes that, by using the term ''transaction value,'' the commenter meant to refer to ''adjusted value'' or ''the price actually paid or payable,'' as those terms are used in paragraphs (a)(1) and (a)(2) of § 10.455. Second, the language ''* * * or at a price reflecting a discount or similar reduction * * *.'' in § 10.455(a)(3) was taken verbatim from Article 4.3 of the US–CFTA and section 202(e) of the Act. CBP is bound by this statutory language and cannot make the substantive change suggested by the commenter. CBP notes that the effect of this provision is to prevent the value of originating materials from being understated for purposes of origin determination by the type of common discounts to which the commenter has referred.

Comment:

One commenter stated that § 10.483(c)(2), relating to voluntary corrections of declarations, should be revised to clarify that the affected import transactions should be identified ''to the extent possible.'' According to the commenter, in some cases, unrelated exporters will not have details (such as the date and port of importation) on the import transactions that were affected by the incorrect declaration.

CBP's Response:

Section 10.410(b) states that it is the responsibility of the U.S. importer (not the exporter) to make a corrected declaration. The importer clearly should be able to identify from its records the import transactions affected by the incorrect declaration, including the port and approximate date of each importation. For this reason, CBP declines to make the change to § 10.483(c)(2) suggested by the commenter.

Comment:

Two commenters noted that CBP Dec. 05–07 amended the scope section(§ 191.0) in Part 191 of the CBP regulations, relating to drawback, to provide a cross-reference to the US–CFTA drawback provisions contained in new Subpart H of Part 10. However, the commenters stated that they were unable to find any provisions in Subpart H which discuss the subject of drawback.

CBP's Response:

Although CBP originally intended to include regulations which address the subject of drawback in new Subpart H of Part 10, it was subsequently determined that no such regulations were necessary as the drawback provisions in Part 191 were sufficient for purposes of the US–CFTA. However, CBP neglected to delete the amendment to § 191.0 set forth in CBP Dec. 05–07, as noted by the commenter. That error has been corrected in this final rule document.

Additional Changes to the Regulations

In addition to the regulatory changes identified and discussed above in connection with the discussion of public comments received in response to CBP Dec. 05–07, the final rulemaking text set forth below incorporates the following additional changes which CBP believes are necessary based on further internal review of the interim regulatory text:

1. In § 10.401, relating to the scope of Subpart H:

a. The words ''entered into'' in the first sentence have been replaced by the word ''signed'' to avoid any potential confusion between the date that the US–CFTA was signed (June 6, 2003) and the date that it entered into force (January 1, 2004); and

b. The reference to Part 191 in the third sentence has been removed consistent with the removal of the cross-reference to Subpart H, Part 10 in § 191.0, as discussed in the comment discussion above;

2. In § 10.402, which sets forth general definitions:

a. The definition of ''claim for preferential tariff treatment'' in paragraph (c) has been revised to add the words ''and to an exemption from the merchandise processing fee'' at the end of the definition to clarify that the term encompasses a claim that a good is entitled to an exemption from the merchandise processing fee (*see* § 24.23(c)(7) of the CBP regulations);

b. The definition of ''national'' (formerly paragraph (o)) has been removed as that term is not used in Subpart H of Part 10;

c. A definition of ''identical goods'' has been added as new paragraph (n). This definition was set forth in §§ 10.411(d)(2) and 10.422(d)(2) of the interim regulatory text but has been removed from those provisions and inserted into the general definitions section for the reason that the term also appears in § 10.474, and the definition is equally applicable to all three provisions. In addition, the definition has been modified slightly by replacing the word ''production'' with the words ''particular rule of origin,'' which CBP believes more accurately describe the means by which a good is determined to qualify as originating;

d. As a result of the removal of the definition of ''national'' and the addition of a definition for ''identical goods'' discussed above, current paragraph (n), setting forth the definition of ''indirect material,'' has been re-designated as paragraph (o), and a conforming change has been made to § 10.460 to reflect the re-designation of this paragraph; and

e. The definition of ''preferential tariff treatment'' in paragraph (s) has been revised to add the words '', and an exemption from the merchandise processing fee'' at the end of the definition to clarify that the term includes an exemption from the merchandise processing fee.

3. In § 10.410, relating to the filing of a claim for preferential tariff treatment:

a. Paragraph (a) has been revised to add the words ''including an exemption from the merchandise processing fee,'' immediately following the words ''under the US–CFTA,'' in the first sentence to clarify that a claim for preferential tariff treatment for an originating good under the US–CFTA includes a claim that the good is entitled to an exemption from the merchandise processing fee;

b. Paragraph (b) has been revised to add the words ''or other information'' immediately following the word ''certification'', consistent with the wording in the corresponding provision in the US–CFTA (*see* Article 4.12.1(c)); and

c. Paragraph (b) has been further revised to provide that a corrected declaration may be effected by submission of a statement ''via an authorized electronic data interchange system,'' as an alternative to submission of a written statement, consistent with CBP's movement toward a paperless environment;

4. In § 10.411, relating to the certification of origin:

a. The heading to § 10.411 and the paragraph (a) introductory text have been revised to add the words ''or other information'' after ''certification'' and ''certification of origin'' to conform to the wording in Articles 4.12.1(b) and 4.14.1 of the US–CFTA, which reference the importer's obligation to submit a certificate of origin or other information demonstrating that the good qualifies as originating;

b. Paragraph (a)(2)(iv) has been modified to add the words ''for which preferential tariff treatment is claimed'' immediately following the word ''good'' for clarification purposes;

c. Paragraph (a)(2)(vii), relating to multiple shipments of identical goods, has been removed and incorporated (in slightly revised form) into re-designated paragraph (e)(2) (formerly paragraph (d)(2)) to clarify that this provision applies to certifications but not to ''other information'' submitted pursuant to § 10.411(a);

d. Paragraph (a)(3), which sets forth the certifying statement to be included on the certification of origin, has been removed and re-designated as new paragraph (b) and a heading has been added. This change clarifies that the statement is required on the certification but not when ''other information'' is submitted pursuant to § 10.411(a);

e. As a result of the insertion of new paragraph (b), as discussed above, paragraphs (b) through (e) of the interim regulatory text have been re-designated as paragraphs (c) through (f), respectively;

f. Re-designated paragraph (c) (formerly paragraph (b)), which concerns who may sign the certification, has been revised to require that the certification of origin include the legal name and address of the responsible official or authorized agent signing the certification, and also to ask for the telephone and e-mail address when available. This information is necessary in the event that the person signing the certification is not identified pursuant to paragraphs (a)(2)(i) through (a)(2)(iii) of § 10.411; and

g. Re-designated paragraphs (d) and (f) (formerly paragraphs (c) and (e), respectively) have been revised to add the words ''or other information'' immediately following the word ''certification,'' consistent with the changes to paragraph (a) discussed above;

5. In § 10.412, relating to importer obligations:

a. Paragraph (a) has been revised to add the words ''or other information submitted to CBP under § 10.411(a) of this subpart'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above;

b. The paragraph (b) introductory text and paragraph (b)(1) have been revised to add the word ''tariff'' between the words ''preferential'' and ''treatment'' each place they appear for clarification purposes and consistent with other references to these words throughout Subpart H. Paragraph (b)(1) has been further revised to add the words ''or other information'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above; and

c. Paragraph (d), which stated that ''* * * importers are expected to establish and implement internal controls which provide for the periodic review of the accuracy of the certifications or other records referred to in paragraph (b)(1) of this section,'' has been removed as there is no basis of authority for this provision in the US–CFTA or the Act;

6. In § 10.413, concerning the validity of the certification, the words ''of this subpart'' have been added immediately following the reference to ''§ 10.411'' each place it appears for clarification purposes;

7. In § 10.414, which sets forth the circumstances under which a certification is not required:

a. The section heading, paragraph (a) introductory text, and paragraph (b) have been revised to add the words ''or other information'' immediately following the word ''certification'' each place it appears, consistent with the change to the § 10.411(a) introductory text discussed above; and

b. The paragraph (a) introductory text has been further revised to replace the words ''for preferential tariff treatment'' with the words ''as originating under § 10.411(a),'' consistent with the wording in § 10.411(a);

8. In § 10.415, concerning maintenance of records, the paragraph (a) introductory text has been revised:

a. To add the word ''tariff'' between the words ''preferential'' and treatment'' for clarification purposes and consistent with other references to these words throughout Subpart H;

b. To add the words ''or other information'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above; and

c. To remove the words ''in the United States'' to conform to the corresponding provision in the US–CFTA (see Article 4.14.3), which includes no restriction on where the records referenced in that provision must be maintained;

9. In § 10.416, relating to the consequences of failing to comply with the requirements of Subpart H:

a. Paragraph (a) has been revised to add the words ''or other information demonstrating that the good qualifies as originating'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above; and

b. Paragraph (b) has been revised to add the words ''of this subpart'' immediately following the reference to ''§ 10.463'' for clarification purposes;

10. In § 10.420, relating to the filing of a tariff preference level (TPL) claim, the words ''of this subpart'' have been added immediately following each of the references to ''§ 10.421'', ''§ 10.451'', ''§ 10.421(a) or (b)'', and ''§ 10.421(c)'' for clarification purposes;

11. In § 10.421, concerning goods eligible for TPL claims:

a. The words ''of this subpart'' have been added immediately following the reference to ''§ 10.420'' in the introductory text for clarification purposes; and

b. The term ''HTS'' has been replaced each place it appears (including the

footnote) with the correct term ''HTSUS'' (see § 10.402(m));

12. In § 10.422, relating to the TPL certificate of eligibility:

a. The paragraph (a) introductory text has been revised to add the words ''of this subpart'' immediately following the reference to ''§ 10.421'' for clarification purposes;

b. Paragraph (a)(2), which sets forth the information to be included on the certificate of eligibility, has been modified to require (in new paragraph (a)(2)(ii)) that the certificate include the legal name and address of the responsible official or authorized agent of the importer signing the certificate (if different from the importer of record), and also to ask for the telephone and e-mail address when available. Similar to the change to § 10.411(c) discussed above, this change is necessary in the event that the person signing the certificate of eligibility is not identified pursuant to § 10.422(a)(2)(i);

c. As a result of the addition of new paragraph (a)(2)(ii), as discussed above, paragraphs (a)(2)(ii) through (a)(2)(vii) of the interim regulatory text have been re-designated as paragraphs (a)(2)(iii) through (a)(2)(viii), respectively; and

d. The reference to ''certification'' in paragraph (d)(2) has been replaced with the correct word ''certificate;''

13. In § 10.424, concerning the effect of noncompliance with applicable TPL requirements, the words ''of this subpart'' have been added immediately following the reference to ''§ 10.422'' in paragraph (a) and the reference to ''§ 10.425'' in paragraph (b) for clarification purposes;

14. In § 10.440, relating to the right to make post-importation duty refund claims, the word ''part'' has been replaced each place it appears with the correct word ''subpart'';

15. In § 10.441, relating to the procedures for filing post-importation claims:

a. Paragraphs (a) and (b)(2) have been revised to replace the word ''part'' each place it appears with the correct word ''subpart''; and

b. Paragraph (b)(2) has been further revised to add the words ''or other information demonstrating'' immediately following the word ''certification'', consistent with the change to the § 10.411(a) introductory text discussed above;

16. In § 10.442, relating to CBP processing procedures for post-importation claims:

a. The word ''part'' in paragraphs (a) and (d)(1) has been replaced each place it appears with the correct word ''subpart'';

b. The words ''for refund'' have been added immediately following the word ''claim'' in the first and second sentences of paragraph (b) for clarification purposes; and

c. Paragraphs (d)((2) and (d)(3) have been revised to provide that notice of a denial of a claim for a refund may be made ''via an authorized electronic data interchange system,'' as an alternative to the issuance of a written notice, consistent with CBP's movement toward a paperless environment;

17. In § 10.450, which sets forth definitions regarding the rules of origin, the words ''of this subpart'' have been added immediately following the reference to ''§§ 10.450 through 10.463'' in the introductory text for clarification purposes:

18. In § 10.455, relating to the value of materials:

a. Paragraph (a)(1) has been revised to add the words ''with respect to that importation'' at the end of the paragraph to conform to the wording in the corresponding statutory provision (see § 202(e)(1)(A) of the Act);

b. The heading to paragraph (b) (''Adjustments to value'') has been changed to read ''Permissible additions to, and deductions from, the value of materials'' to avoid any potential confusion between the heading to this paragraph and the term ''adjusted value;''

c. Paragraphs (b)(1)(i) and (b)(2)(i) have been revised to delete the words ''within or between the territory of Chile, the United States, or both'' to conform these paragraphs to the wording in the corresponding statutory provisions (see § 202(e)(2)(A)(i) and (B)(i) of the Act), respectively; and

d. Paragraph (c) has been modified to replace the term ''country,'' which is not defined in Subpart H, with the more appropriate term ''Party,'' which is defined in § 10.402(q);

19. In §§ 10.457(a) and 10.458(a), concerning fungible goods and materials, and accumulation, respectively, the term ''country'' has been replaced each place it appears with the more appropriate term ''Party;''

20. In § 10.461, relating to indirect materials, Example 1 has been revised to add the words ''of this subpart'' at the end of the parenthetical phrase ''see § 10.454(a)'' in the third sentence;

21. In § 10.470, relating to verification of claims for preferential tariff treatment:

a. The section heading has been revised to add the word ''tariff'' between the words ''preferential'' and ''treatment'';

b. The heading to paragraph (a) has been revised to remove the words ''by CBP'' to allow for the possibility that another U.S. Government agency may assist in a verification; and

c. The first sentence of the paragraph (a) introductory text has been revised to add the word ''tariff'' between the words ''preferential'' and ''treatment'' and to add the words ''of this subpart'' immediately following the reference to ''§ 10.410''.

d. The second sentence of the paragraph (a) introductory text has been revised to replace the words ''for any reason is prevented from verifying'' with the words ''is provided with insufficient information to verify or substantiate'', and to add the word ''tariff'' between the words ''preferential'' and ''treatment''. The former change recognizes that the words ''for any reason'' may be interpreted too broadly and result in the denial of a claim for reasons beyond the control of the parties to an import transaction. This new wording more accurately reflects the circumstances under which a verification may result in the denial of a claim—the failure to provide sufficient information to verify or substantiate the claim for preferential tariff treatment;

22. In § 10.473, concerning notice of a negative origin determination:

a. The incorrect reference to ''section''' in the introductory text has been replaced with the correct word ''subpart'';

b. The introductory text has been further revised to provide for the issuance of a negative origin determination ''via an authorized electronic data interchange system,'' as an alternative to the issuance of a written determination, consistent with CBP's movement toward a paperless environment; and

c. Paragraph (c) has been revised to replace the words ''the 'Rules of Origin' heading under this subpart'' with the words ''§§ 10.450 through 10.463 of this subpart'' to provide more clarity regarding the regulatory provisions to which this paragraph is referring;

23. In § 10.474, relating to repeated false or unsupported preference claims, the words ''CBP finds'' have been replaced with the words ''verification or other information reveals'' to more accurately reflect the wording in § 205(g) of the Act, which provides, in pertinent part, that ''[i]f the Bureau of Customs and Border Protection *or* the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct * * *.'' [Emphasis added.];

24. In § 10.483, concerning the framework for correcting declarations and certifications:

a. The incorrect reference to ''part'' in paragraph (a)(2) has been replaced by the correct word ''chapter''; and

b. Paragraph (c) has been revised to remove the word ''Written'' in the heading and by providing in the introductory text for the submission of a statement ''via an authorized electronic data interchange system,'' as an alternative to the submission of a written statement, consistent with the change described above in regard to § 10.410(b);

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and based on the additional considerations discussed above, CBP believes that the interim regulations published as CBP Dec. 05–07 should be adopted as a final rule with certain changes as discussed above and as set forth below.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

The regulations to implement the preferential tariff treatment and other customs-related provisions of the US–CFTA were previously published in CBP Dec. 05–07 as interim regulations. CBP issued the regulations as an interim rule because it had determined that: (1) They involve the foreign affairs function of the United States pursuant to section 553(a)(1) of the Administrative Procedure Act (APA); and (2) prior public notice and comment procedures on these regulations were impracticable, unnecessary, and contrary to the public interest pursuant to section 553(b)(B) of the APA. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final rule has previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117. The collection of information in these regulations is in §§ 10.410 and 10.411. This information is used by CBP to determine eligibility for a tariff preference or other rights or benefits under the US–CFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements (United States-Chile Free Trade Agreement).

19 CFR Part 191

Commerce, Customs duties and inspection, Drawback, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

■ Accordingly, the interim rule amending parts 10, 24, 162, 163, 178, and 191 of the CBP regulations (19 CFR parts 10, 24, 162, 163, 178, and 191), which was published at 70 FR 10868 on March 7, 2005, is adopted as a final rule with certain changes as discussed above and set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 and the specific authority for subpart H continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.401 through 10.490 also issued under Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note).

§ 10.401 [Amended]

■ 2. Section 10.401 is amended by removing the words ''entered into'' in the first sentence and adding, in their place, the word ''signed'', by adding the word ''and'' immediately prior to the number ''163'' in the third sentence, and by removing the words ''and 191'' in the third sentence;

■ 3. Section 10.402 is amended by revising paragraph (c), removing current paragraph (o), re-designating current paragraph (n) as paragraph (o), adding a new paragraph (n), and revising paragraph (s). The revisions and addition to § 10.402 read as follows:

§ 10.402 General definitions.

* * * * *

(c) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the US–CFTA and to an exemption from the merchandise processing fee;

* * * * *

(n) *Identical goods.* ''Identical goods'' means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

* * * * *

(s) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable to an originating good under the US–CFTA, and an exemption from the merchandise processing fee.

* * * * *

■ 4. Section 10.410 is amended by adding the words ''including an exemption from the merchandise processing fee,'' immediately following the words ''under the US–CFTA,'' in the first sentence of paragraph (a) and by revising paragraph (b). Revised paragraph (b) reads as follows:

§ 10.410 Filing of claim for preferential tariff treatment upon importation.

* * * * *

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the U.S. importer has reason to believe that the declaration or the certification or other information on which the declaration was based contains information that is not correct, the importer must, within 30 calendar days after the date of discovery of the error, make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other statement either in writing or via an authorized electronic data interchange system to the CBP office where the original declaration was filed specifying the correction (*see* §§ 10.482 and 10.483 of this subpart);

■ 5. In § 10.411:

■ a. The section heading is revised;

■ b. Paragraph (a) is amended by revising the introductory text and paragraph (a)(2)(iv) and by removing paragraphs (a)(2)(vii) and (a)(3);

■ c. Current paragraphs (b), (c), (d), and (e) are re-designated as paragraphs (c), (d), (e), and (f), respectively;

■ d. A new paragraph (b) is added;

■ e. The introductory text of re-designated paragraph (c) is revised;

■ f. Re-designated paragraphs (d) and (e)(2) and the introductory text to re-designated paragraph (f) are revised.

The additions and revisions to § 10.411 read as follows:

§ 10.411 Certification of origin or other information.

(a) *Contents.* An importer who claims preferential tariff treatment on a good must submit, at the request of the port director, a certification of origin or other information demonstrating that the good qualifies as originating. A certification or other information submitted to CBP under this paragraph:

* * * * *

(2) * * *

(iv) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nonmenclature;

* * * * *

(b) *Statement.* A certification submitted to CBP under paragraph (a) of this section must include a statement, in substantially the following form:

''I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain, and present upon request, documentation necessary to support this certification, and to inform, in writing, all persons to whom the certification was given of any changes that could affect the accuracy or validity of this certification; and

The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for those goods in the United States-Chile Free Trade Agreement; there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of ____ pages, including all attachments.''

(c) *Responsible official or agent.* A certification submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer; exporter; or producer; or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts. The certification must include the legal name and address of the responsible official or authorized agent signing the certification, and should include that person's telephone and e-mail address, if available. If the person making the certification is not the producer of the good, or the producer's authorized agent, the person may sign the certification of origin based on:

* * * * *

(d) *Language.* The certification or other information submitted under paragraph

(a) of this section must be completed either in the English or Spanish language. If the certification or other information is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certification or other information.

(e) * * *

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months. In the case of multiple shipments of identical goods, the certification must specify the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format.

(f) *Preference criteria.* The preference criterion to be included on the certification or other information as required in paragraph (a)(2)(vi) of this section is as follows:

* * * * *

■ 6. Section 10.412 is amended by revising paragraphs (a) and (b)(1) and by removing paragraph (d). The revisions to paragraphs (a) and (b)(1) read as follows:

§ 10.412 Importer obligations.

(a) *General.* An importer who makes a declaration under § 10.410(a) of this subpart is responsible for the truthfulness of the declaration and of all the information and data contained in the certification or other information submitted to CBP under § 10.411(a) of this subpart, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) * * *

(1) Must have records that explain how the importer came to the conclusion that the good qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rules of origin set forth in General Note 26, HTSUS, and in this subpart. Those records may include a properly completed certification or other information as set forth in § 10.411 of this subpart; and

* * * * *

§ 10.413 [Amended]

■ 7. Section 10.413 is amended by adding the words ''of this subpart'' immediately following the reference to ''§ 10.411'' each place it appears;

■ 8. Section 10.414 is amended by revising the section heading, paragraph (a) introductory text, and paragraph (b) to read as follows:

§ 10.414 Certification or other information not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certification or other information demonstrating that the good qualifies as originating under § 10.411(a) of this subpart for:

* * * * *

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certification or other information

demonstrating that the good qualifies as originating. The importer must submit such a certification or other information within 30 calendar days from the date of the written notice. Failure to timely submit the certification or other information will result in denial of the claim for preferential tariff treatment.

■ 9. Section 10.415 is amended by revising the paragraph (a) introductory text to read as follows:

§ 10.415 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States must maintain, for five years after the date of importation of the good, a certification (or a copy thereof) or other information demonstrating that the good qualifies as originating, and any records and documents that the importer has relating to the origin of the good, including records and documents associated with:

* * * * *

■ 10. Section 10.416 is amended by revising paragraph (a) and by adding the words ''of this subpart'' immediately following the reference to ''§ 10.463'' in paragraph (b). Revised paragraph (a) reads as follows:

§ 10.416 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a certification of origin or other information demonstrating that the good qualifies as originating under § 10.411(a) of this subpart or submission of a corrected certification under § 10.413 of this subpart, the port director may deny preferential tariff treatment to the imported good.

* * * * *

§ 10.420 [Amended]

■ 11. Section 10.420 is amended by adding the words ''of this subpart'' immediately following each of the references in the section to ''§ 10.421,'' ''§ 10.451,'' ''§ 10.421(a) or (b),'' and ''§ 10.421(c)'';

§ 10.421 [Amended]

■ 12. Section § 10.421 is amended by adding the words ''of this subpart'' immediately following the reference to ''§ 10.420'' in the introductory text and by removing the term ''HTS'' each place it appears in the section (and footnote) and adding, in its place, the term ''HTSUS'';

■ 13. Section 10.422 is amended by adding the words ''of this subpart'' immediately following the reference to ''§ 10.421'' in the paragraph (a) introductory text, by re-designating current paragraphs (a)(2)(ii) through (a)(2)(vii) as paragraphs (a)(2)(iii) through (a)(2)(viii), respectively, by adding a new paragraph (a)(2)(ii), and by revising paragraph (d)(2). New paragraph (a)(2)(ii) and revised paragraph (d)(2) read as follows:

§ 10.422 Submission of certificate of eligibility.

(a) * * *

(2) * * *

(ii) The legal name and address of the responsible official or authorized agent of the importer signing the certificate (if different from the importer of record), and that person's telephone and e-mail address, if available;

* * * * *

(d) * * *

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certificate.

§ 10.424 [Amended]

■ 14. Section 10.424 is amended by adding the words ''of this subpart'' immediately following the reference to ''§ 10.422'' in paragraph (a) and immediately following the reference to ''§ 10.425'' in paragraph (b);

§ 10.440 [Amended]

■ 15. Section 10.440 is amended by removing the word ''part'' each place it appears and adding, in its place, the word ''subpart'';

■ 16. Section 10.441 is amended by removing the word ''part'' in paragraph (a) and adding, in its place, the word ''subpart'', and by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 10.441 Filing procedures.

* * * * *

(b) * * *

(2) Subject to § 10.413 of this subpart, a copy of a certification of origin or other information demonstrating that the good qualifies for preferential tariff treatment;

* * * * *

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

■ 17. Section 10.442 is amended by removing the word ''part'' each place it appears in paragraphs (a) and (d)(1) and adding, in its place, the word ''subpart'', and by revising the heading and text of paragraph (b), the second sentence of paragraph (c)(2), paragraph (d)(2), and the second and third sentences of paragraph (d)(3). The revisions to paragraphs (b), (c)(2), (d)(2) and (d)(3) read as follows:

§ 10.442 CBP processing procedures.

* * * * *

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) * * *

(2) * * * If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) * * *

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) * * * If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

§ 10.450 [Amended]

■ 18. Section 10.450 is amended by adding the words ''of this subpart'' immediately following the reference to ''§§ 10.450 through 10.463'' in the introductory text.

■ 19. Section 10.455 is amended by revising paragraph (a)(1), the heading to paragraph (b), and paragraphs (b)(1)(i), (b)(2)(i), and (c) to read as follows:

§ 10.455 Value of materials.

(a) * * *

(1) In the case of a material imported by the producer of the good, the adjusted value of the material with respect to that importation;

* * * * *

(b) *Permissible additions to, and deductions from, the value of materials.*

* * * * *

(1) * * *

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;

* * * * *

(2) * * *

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;

(c) *Accounting method.* Any cost or value referenced in General Note 26(n), HTSUS, and this subpart, must be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced (whether Chile or the United States).

§ 10.457 [Amended]

■ 20. In § 10.457, paragraph (a)(4) is amended by removing the word ''country'' each place it appears and adding, in its place, the word ''Party''.

§ 10.458 [Amended]

■ 21. In § 10.458, paragraph (a) is amended by removing the word ''country'' each it appears and adding, in its place, the word ''Party''.

§ 10.460 [Amended]

■ 22. Section 10.460 is amended by removing the term ''§ 10.402(n)'' and adding, in its place, the term ''§ 10.402(o)''.

§ 10.461 [Amended]

■ 23. Section 10.461 is amended by adding in Example 1 the words ''of this subpart'' at the end of the parenthetical phrase ''see § 10.454(a)'' in the third sentence.

■ 24. In § 10.470, paragraph (a) is amended by revising the heading and the first two sentences of the introductory text, to read as follows:

§ 10.470 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 10.410 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential tariff treatment.

* * *

* * * * *

■ 25. Section 10.473 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 10.473 Issuance of negative origin determinations.

If CBP determines, as a result of an origin verification initiated under this subpart, that the good which is the subject of the verification does not qualify as an originating good, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

* * * * *

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 26, HTSUS, and in §§ 10.450 through 10.463 of this subpart, the legal basis for the determination; and

* * * * *

§ 10.474 [Amended]

■ 26. Section 10.474 is amended by removing the words ''CBP finds'' and adding, in their place, the words ''verification or other information reveals'';

■ 27. In § 10.483, paragraph (a)(2) is amended by removing the word ''part'' and adding, in its place, the word ''chapter,'' and paragraph (c) introductory text is revised to read as follows:

§ 10.483 Framework for correcting declarations and certifications.

* * * * *

(c) *Statement.* For purposes of this subpart, each corrected declaration or notification of an incorrect certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

* * * * *

PART 191—DRAWBACK

■ 28. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

§ 191.0 [Amended]

■ 29. Section 191.0 is amended by removing the last sentence.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

Approved: December 15, 2006.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–9780 Filed 12–19–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9302]

RIN 1545–BC34

Prohibited Allocations of Securities in an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance concerning requirements under section 409(p) of the Internal Revenue Code for employee stock ownership plans (ESOPs) holding stock of Subchapter S corporations. These final regulations generally affect plan sponsors of, and participants in, ESOPs holding stock of Subchapter S corporations.

DATES: *Effective Date:* These regulations are effective December 20, 2006.

Applicability Dates: These regulations are generally applicable with respect to plan years beginning on or after January 1, 2006. See the Effective Date section of the preamble for specific information.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta or Veronica A. Rouse at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations (26 CFR Part 1) under section 409(p) of the Internal Revenue Code (Code).

Section 409(p)(1) requires an ESOP holding employer securities consisting of stock in an S corporation to provide that, during an allocation year, no portion of the assets of the plan attributable to, or allocable in lieu of, the employer securities may accrue (or be allocated directly or indirectly under any plan of the employer meeting the

requirements of section 401(a)) for the benefit of any disqualified person. Section 409(p)(3)(A) provides that a nonallocation year includes any plan year during which the ownership of the S corporation is so concentrated among disqualified persons that they own or are deemed to own at least 50 percent of its shares. Section 409(p)(4) provides, in general, that a disqualified person is any person whose deemed-owned ESOP shares (allocated ESOP shares and proportion of suspense account shares) are at least 10 percent of the number of deemed-owned shares of S corporation stock held by an ESOP or for whom the aggregate number of shares owned by such person and the members of such person's family is at least 20 percent of deemed-owned ESOP shares. Under section 409(p)(5), the determination of whether a person is a disqualified person and whether a plan year is a nonallocation year is also made separately taking into account synthetic equity if such treatment results in treating the person as a disqualified person or the year as a nonallocation year.

Temporary regulations under section 409(p) were issued on July 21, 2003, (68 FR 42970). The text of those temporary regulations also served as the text of a notice of proposed rulemaking (REG–129709–03) published at 68 FR 43058. The 2003 regulations provided guidance on identifying disqualified persons, determining whether an ESOP has a nonallocation year, and defining synthetic equity under section 409(p)(5), and reserved some issues, including the definition of a prohibited allocation, the tax effect of a prohibited allocation, and certain issues relating to the definition of synthetic equity.

A public hearing on the 2003 regulations was held on November 17, 2003. New temporary regulations under section 409(p) (TD 9164) were published in the **Federal Register** on December 17, 2004, (69 FR 75455). The new temporary regulations (2004 temporary regulations) addressed certain issues raised in the comments, as well as addressing the topics reserved in the 2003 temporary regulations. The text of the 2004 temporary regulations also served as the text for a notice of proposed rulemaking (REG–129709–03) published at (69 FR 75492).

A public hearing on the 2004 proposed regulations was held on April 20, 2005. After consideration of the comments received, these final regulations adopt the provisions of the proposed regulations with certain modifications discussed in this preamble.

Explanation of Provisions

Definition of Prohibited Allocation

These regulations retain the rule of the 2004 temporary regulations concerning prohibited allocations under which there is an impermissible accrual to the extent employer securities consisting of stock in an S corporation are held under the ESOP for the benefit of a disqualified person during a nonallocation year. Thus, in the event of a nonallocation year, S corporation shares held in a disqualified person's account and all other ESOP assets attributable to S corporation stock, including distributions, sales proceeds, and earnings, are treated as an impermissible accrual whether attributable to contributions in the current year or a prior year. A commentator questioned whether the definition of prohibited allocation in the 2004 temporary regulations should include account balances of disqualified persons from prior years. The rule of the 2004 temporary regulations has been retained because it is consistent with the intent of the statute, and the IRS and Treasury Department believe it is necessary to prevent the concentration of ownership interests that section 409(p) was intended to prevent.

A commentator also questioned the treatment of proceeds from the sale of stock previously allocated to a disqualified person's account under the 2004 temporary regulations. The commentator expressed concern that treating the sales proceeds as an impermissible accrual when the original allocation of stock is already a prohibited allocation is a double penalty. The final regulations do not change this rule in the 2004 temporary regulations. An allocation of sales proceeds from stock held for the benefit of a disqualified person back into the account of the disqualified person is as valuable an accrual for the disqualified person as an investment in employer stock. This treatment is also consistent with the prohibition in section 409(p)(1) with respect to amounts that are ''allocable in lieu of'' employer stock.

Effect of a Prohibited Allocation

These regulations retain the rule of the 2004 regulations that if there is a prohibited allocation during a nonallocation year, the ESOP fails to satisfy the requirements of section 4975(e)(7) and ceases to be an ESOP. As a result, the exemption from the excise tax on prohibited transactions for loans to leveraged ESOPs contained in section 4975(d)(3) would cease to apply to any loan (with the result that the employer would owe an excise tax with respect to the previously exempt loan). These regulations clarify that an additional result would be the plan's failure to satisfy the qualification requirements under section 401(a) for not operating the plan in accordance with its terms to reflect section 409(p). Other consequences include imposition of an excise tax on the S corporation under section 4979A. An example has been added to these final regulations to illustrate the impact of these rules on an S corporation ESOP.

These regulations include the rule from the 2004 regulations under which a prohibited allocation is a deemed distribution that is not an eligible rollover distribution. These regulations also add that same rule to the list of distributions that are not eligible rollover distributions in the regulations under section 402(c) (at § 1.402(c)–2 of the Treasury Regulations). As a result, under recently proposed regulations relating to designated Roth contributions under section 402A, a deemed distribution as a result of a section 409(p) prohibited allocation with respect to a designated Roth account would not constitute a qualified distribution for purposes of section 402A. See proposed § 1.402A–1, A–11, at 71 FR 4320 (January 26, 2006).

Prevention of Nonallocation Year

The preamble to the 2004 regulations described methods that a plan might use to prevent the occurrence of a nonallocation year, including (1) a reduction of synthetic equity (for example, through cancellation or distribution), (2) a sale of the S corporation securities held in the participant's ESOP account before a nonallocation year occurs so that the account is not invested in S corporation stock, or (3) a transfer of the S corporation securities held for the participant under the ESOP into a separate portion of the plan that is not an ESOP or to another qualified plan of the employer that is not an ESOP.

Any methods of preventing a nonallocation year must satisfy applicable legal and qualification requirements, including the nondiscrimination requirements of section 401(a)(4) (including the rules at § 1.401(a)(4)–4 relating to benefits, rights and features), and implementation of these methods must be completed before a nonallocation year occurs. These regulations retain the special rule provided in the 2004 regulations for applying the nondiscrimination requirements under section 401(a)(4) for a plan that uses the transfer method. Thus, these regulations provide that, if a transfer is made from

an ESOP to a separate portion of the plan (or to another qualified plan of the employer) that is not an ESOP in order to prevent a nonallocation year, then both the ESOP and the plan that is not an ESOP will not fail to satisfy the requirements of § 1.401(a)(4)–4 merely because of the transfer. Similarly, these regulations provide that, subsequent to the transfer, the plan will not fail to satisfy the requirements of § 1.401(a)(4)–4 merely because of the benefits, rights, and features with respect to the transferred benefits if those benefits, rights, and features would satisfy the requirements of § 1.401(a)(4)–4 if the mandatory disaggregation rule for ESOPs at § 1.410(b)–7(c)(2) did not apply. These regulations clarify that any such transfers must be effectuated by an affirmative action taken no later than the date of the transfer, and all subsequent actions (including benefit statements) must be consistent with the transfer having occurred on that date. Further, in order to use the transfer method to prevent a nonallocation year, the plan must provide for the transfer of the stock to the non-ESOP portion of the plan.

A commentator described another method of preventing a nonallocation year under which stock of a participant is exchanged for cash or other assets, which are already in the accounts of other participants in order to change the stock holdings among participants before a nonallocation year occurs, but which does not change the overall stock holding of the ESOP trust. This method has been referred to as reshuffling. The commentator requested that relief from the nondiscriminatory availability requirements be extended to this method.

Absent a special rule for applying the nondiscrimination requirements of section 401(a)(4), it will be difficult for a plan to prevent a nonallocation year through reshuffling without violating section 401(a)(4). The right of each participant to have or not have a particular investment in his or her account (either as a participant-directed investment or as a trustee-directed investment) is a plan right or feature that is subject to the current and effective availability requirements of § 1.401(a)(4)–4. Accordingly, if assets in the accounts of one or more non-highly compensated employees (NHCEs) are mandatorily exchanged, then, in the absence of other relevant factors, the plan would generally be expected to fail to satisfy the nondiscriminatory availability requirements of § 1.401(a)(4)–4.

The IRS and Treasury Department do not believe that it would be appropriate to provide a special rule that would materially weaken the standard for nondiscriminatory availability of participant rights to a particular investment under the plan. By contrast, the special nondiscrimination rules for stock transferred out of the ESOP do not change the rights of NHCEs to any particular investment in the plan as a whole, but simply allow the transfer and allow the rights of participants whose stock is transferred out of the ESOP to be taken into account in determining whether the rights of participants whose stock remains in the ESOP satisfy the nondiscriminatory availability requirements of § 1.401(a)(4)–4.

An S corporation may be able to achieve the same result as reshuffling by reducing contributions for HCEs who are or may become disqualified persons, by providing additional benefits to NHCEs who are not disqualified persons, by expanding coverage to include all employees, or by diversifying out of employer stock for HCEs who are or may become disqualified persons and who are qualified participants within the meaning of section 401(a)(28)(B)(iii) (that is, by mandating diversification using one of the diversification options that are offered to all qualified participants, for which there is an existing special nondiscrimination rule at § 1.401(a)(4)–4(d)(6)). Thus, in addition to plan transfers, any of these actions may help prevent the concentration of deemed-owned ESOP shares that section 409(p) prohibits, without the nondiscrimination problems otherwise associated with reshuffling. Of course, any transfer or other method used to ensure compliance with section 409(p) must also satisfy any other legal requirements that may apply, including section 407(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829) Public Law 93–406 (which, in relevant part, generally prohibits a plan from investing more than 10 percent of elective deferral accounts in employer stock, unless the plan is an ESOP, the investment is at the direction of the participant, or another exception applies).

Treatment of Family Members as Disqualified Persons

The 2004 regulations included a number of attribution rules, which these regulations retain, including the application of the section 318 attribution rules to ownership of synthetic equity in determining who is a disqualified person. Section 409(p) contains references to the section 318 rules in certain cases, such as in determining a nonallocation year, but commentators pointed out that the section 318 rules did not apply for purposes of the disqualified person definition, which was not reflected in an example. Another commentator pointed out that the rules for determining whether family members are disqualified persons varies according to the individual being tested. For example, the technical language of section 409(p)(4)(D) treats parents-in-law as members of a married child's family when testing whether a child is a disqualified person, but not as members of the same family as the child's parents when testing whether the child's parents are disqualified persons. In response to comments, the regulations have been modified to clarify these rules, including revisions in the examples to illustrate the application of the rules to specific factual patterns.

Determination of Number of Shares of Non-Stock-Based Synthetic Equity

These regulations retain the rules from both the 2003 and the 2004 regulations regarding calculation of the number of shares of synthetic equity that are not determined by reference to shares of stock of the S corporation. These regulations provide that the person who is entitled to the synthetic equity is treated as owning a number of shares of stock in the S corporation equal to the present value of the synthetic equity (with such value determined without regard to any lapse restriction as defined under the section 83 regulations) divided by the fair market value of a share of the S corporation's stock as of the same date. These regulations also retain the special rule under the 2004 regulations that permits the ESOP to provide, on a reasonable and consistent basis for all persons, for the number of synthetic equity shares treated as owned on a determination date to remain constant for up to a 3-year period from that date (triennial method). This rule addresses concerns raised in comments to the 2003 regulations regarding the volatility of the number of shares of synthetic equity where that calculation is based on the value of an S corporation share.

A commentator questioned whether the triennial method of the 2004 regulations should be expanded to permit a more flexible triennial period that allows for the acceleration or delay of the triennial determination date. The commentator argued that, since the triennial method's purpose is to eliminate the risk attributable to volatility of the present value of the nonqualified deferred compensation

stock and the risk attributable to the fair market value of company stock, the inability to delay or accelerate the date, automatically and daily if necessary, weakens the purpose of the method.

These regulations include changes in the triennial methodology to permit the ability, during the 3-year period, to accelerate a determination date prospectively in the event of a change in the plan year or any merger, consolidation, or transfer of ESOP assets under section 414(l). However, a determination date may not be changed retroactively and the change must be effectuated by a plan amendment adopted before the new determination date.[1]

A commentator also requested clarification regarding how shares of synthetic equity are calculated with respect to nonqualified deferred compensation. Specifically, the commentator wanted to know what discount rate should be used to calculate the present value of nonqualified deferred compensation, and how to determine the number of equivalent shares for a split-dollar life insurance arrangement. These regulations do not mandate a specific discount rate for calculating the present value of nonqualified deferred compensation or a specific method for determining the equivalent number of shares for a split dollar arrangement. However, any assumptions used for such purposes must be reasonable.

Finally, a commentator asked whether an individual S corporation shareholder's right of first refusal to acquire S corporation stock from an ESOP for its fair market value is considered synthetic equity. The regulations have been revised to clarify that the right of first refusal to acquire stock held by an ESOP is not treated as a right to acquire stock of an S corporation under these regulations if the right to acquire stock would not be taken into account under § 1.1361–1(l)(2)(iii)(A) in determining whether an S corporation has a second class of stock and the price at which the stock is acquired under the right of first refusal is not less than the price determined for purposes of the put right required by section 409(h). See § 54.4975–11(d)(5) of the Excise Tax Regulations. Of course, any right of first refusal must comply with the requirements of § 54.4975–7(b)(9) of the Excise Tax Regulations. In addition, these regulations give the Commissioner the authority to treat a right of first refusal as synthetic equity if the Commissioner determines, based on the facts and circumstances, that the right to acquire stock held by the ESOP constitutes an avoidance or evasion of section 409(p).

[1] As indicated in Notice 2005–95, 2005–51 IRB, dated December 19, 2005, the general deadline for discretionary amendments in Rev. Proc. 2005–66, 2005–37 IRB 509, does not apply if a statute or regulation specifically provides an earlier deadline. These regulations provide such an earlier deadline.

Effective Dates

These regulations generally are applicable for plan years beginning on or after January 1, 2006. However, these regulations retain, by cross reference, the 2004 regulations for plan years beginning before January 1, 2006.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information requirement upon small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the temporary and proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are John T. Ricotta and Veronica A. Rouse of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities); however, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.409(p)–1 is also issued under 26 U.S.C. 409(p)(7). * * *

■ **Par. 2.** Section 1.402(c)–2, A–4, is revised by redesignating paragraph (g) as (h) and adding a new paragraph (g) to read as follows:

§ 1.402(c)–2 Eligible rollover distributions; questions and answers.

* * * * *

A–4. * * *

(g) Prohibited allocations that are treated as deemed distributions pursuant to section 409(p).

* * * * *

■ **Par. 3.** Section 1.409(p)–1 is added to read as follows:

§ 1.409(p)–1 Prohibited allocation of securities in an S corporation.

(a) *Organization of this section and definition*—(1) *Organization of this section.* Section 409(p) applies if a nonallocation year occurs in an ESOP that holds shares of stock of an S corporation that are employer securities. Paragraph (b) of this section sets forth the general rule under section 409(p)(1) and (2) prohibiting any accrual or allocation to a disqualified person in a nonallocation year. Paragraph (c) of this section sets forth rules under section 409(p)(3), (5), and (7) for determining whether a year is a nonallocation year, generally based on whether disqualified persons own at least 50 percent of the shares of the S corporation, either taking into account only the outstanding shares of the S corporation (including shares held by the ESOP) or taking into account both the outstanding shares and synthetic equity of the S corporation. Paragraphs (d), (e), and (f) of this section contain definitions of disqualified person under section 409(p)(4) and (5), deemed-owned ESOP shares under section 409(p)(4)(C), and synthetic equity under section 409(p)(6)(C). Paragraph (g) of this section contains a standard for determining when the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p).

(2) *Definitions.* The following definitions apply for purposes of section 409(p) and this section, as well as for purposes of section 4979A, which imposes an excise tax on certain events.

(i) *Deemed-owned ESOP shares* has the meaning set forth in paragraph (e) of this section.

(ii) *Disqualified person* has the meaning set forth in paragraph (d) of this section.

(iii) *Employer* has the meaning set forth in § 1.410(b)–9.

(iv) *Employer securities* means employer securities within the meaning of section 409(l).

(v) *ESOP* means an employee stock ownership plan within the meaning of section 4975(e)(7).

(vi) *Prohibited allocation* has the meaning set forth in paragraph (b)(2) of this section.

(vii) *S corporation* means S corporation within the meaning of section 1361.

(viii) *Synthetic equity* has the meaning set forth in paragraph (f) of this section.

(b) *Prohibited allocation in a nonallocation year*—(1) *General rule.* Section 409(p)(1) provides that an ESOP holding employer securities consisting of stock in an S corporation must provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue under the ESOP, or be allocated directly or indirectly under any plan of the employer (including the ESOP) meeting the requirements of section 401(a), for the benefit of any disqualified person.

(2) *Additional rules*—(i) *Prohibited allocation definition.* For purposes of section 409(p) and this section, a *prohibited allocation* means an impermissible accrual or an impermissible allocation. Whether there is impermissible accrual is determined under paragraph (b)(2)(ii) of this section and whether there is an impermissible allocation is determined under paragraph (b)(2)(iii) of this section. The amount of the prohibited allocation is equal to the sum of the amount of the impermissible accrual plus the amount of the impermissible allocation.

(ii) *Impermissible accrual.* There is an impermissible accrual to the extent that employer securities consisting of stock in an S corporation owned by the ESOP and any assets attributable thereto are held under the ESOP for the benefit of a disqualified person during a nonallocation year. For this purpose, assets attributable to stock in an S corporation owned by an ESOP include any distributions, within the meaning of section 1368, made on S corporation stock held in a disqualified person's account in the ESOP (including earnings thereon), plus any proceeds from the sale of S corporation securities held for a disqualified person's account in the ESOP (including any earnings thereon). Thus, in the event of a nonallocation year, all S corporation shares and all other ESOP assets attributable to S corporation stock, including distributions, sales proceeds, and earnings on either distributions or proceeds, held for the account of such disqualified person in the ESOP during that year are an impermissible accrual for the benefit of that person, whether attributable to contributions in the current year or in prior years.

(iii) *Impermissible allocation.* An impermissible allocation occurs during a nonallocation year to the extent that a contribution or other annual addition (within the meaning of section 415(c)(2)) is made with respect to the account of a disqualified person, or the disqualified person otherwise accrues additional benefits, directly or indirectly under the ESOP or any other plan of the employer qualified under section 401(a) (including a release and allocation of assets from a suspense account, as described at § 54.4975–11(c) and (d) of this chapter) that, for the nonallocation year, would have been added to the account of the disqualified person under the ESOP and invested in employer securities consisting of stock in an S corporation owned by the ESOP but for a provision in the ESOP that precludes such addition to the account of the disqualified person, and investment in employer securities during a nonallocation year.

(iv) *Effects of prohibited allocation*—(A) *Deemed distribution.* If a plan year is a nonallocation year, the amount of any prohibited allocation in the account of a disqualified person as of the first day of the plan year, as determined under this paragraph (b)(2), is treated as distributed from the ESOP (or other plan of the employer) to the disqualified person on the first day of the plan year. In the case of an impermissible accrual or impermissible allocation that is not in the account of the disqualified person as of the first day of the plan year, the amount of the prohibited allocation, as determined under this paragraph (b)(2), is treated as distributed on the date of the prohibited allocation. Thus, the fair market value of assets in the disqualified person's account that constitutes an impermissible accrual or allocation is included in gross income (to the extent in excess of any investment in the contract allocable to such amount) and is subject to any additional income tax that applies under section 72(t). A deemed distribution under this paragraph (b)(2)(iv)(A) is not an actual distribution from the ESOP. Thus, the amount of the prohibited allocation is not an eligible rollover distribution under section 402(c). However, for purposes of applying sections 72 and 402 with respect to any subsequent distribution from the ESOP, the amount that the disqualified person previously took into account as income as a result of the deemed distribution is treated as investment in the contract.

(B) *Other effects.* If there is a prohibited allocation, then the plan fails to satisfy the requirements of section 4975(e)(7) and ceases to be an ESOP. In such a case, the exemption from the excise tax on prohibited transactions for loans to leveraged ESOPs contained in section 4975(d)(3) would cease to apply to any loan (with the result that the employer would owe an excise tax with respect to the previously exempt loan). As a result of these failures, the plan would lose the prohibited transaction exemption for loans to an ESOP under section 4975(d)(3) of the Code and section 408(b)(3) of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Finally, a plan that does not operate in accordance with its terms to reflect section 409(p) fails to satisfy the qualification requirements of section 401(a), which would cause the corporation's S election to terminate under section 1362. See also section 4979A(a) which imposes an excise tax in certain events, including a prohibited allocation under section 409(p).

(C) *Example.* The rules of this paragraph (b)(2)(iv) are illustrated by the following example:

Example. (i) *Facts.* Corporation M, an S corporation under section 1361, establishes Plan P as an ESOP in 2006, with a calendar plan year. Plan P is a qualified plan that includes terms providing that a prohibited allocation will not occur during a nonallocation year in accordance with section 409(p). On December 31, 2006, all of the 1,000 outstanding shares of stock of Corporation M, with a fair market value of $30 per share, are contributed to Plan P and allocated among accounts established within Plan P for the benefit of Corporation M's three employees, individuals A, B, and C, based on their compensation for 2006. As a result, on December 31, 2006, participant A's account includes 800 of the shares ($24,000); participant B's account includes 140 of the shares ($4,200); and participant C's account includes the remaining 60 shares ($1,800). The plan year 2006 is a nonallocation year, participants A and B are disqualified persons on December 31, 2006, and a prohibited allocation occurs for A and B on December 31, 2006.

(ii) *Conclusion.* On December 31, 2006, participants A and B each have a deemed distribution as a result of the prohibited allocation, resulting in income of $24,000 for participant A and $4,200 for participant B. Corporation M owes an excise tax under section 4979A, based on an amount involved of $28,200. Plan P ceases to be an ESOP on the date of the prohibited allocation (December 31, 2006) and also fails to satisfy the qualification requirements of section 401(a) on that date due to the failure to comply with the provisions requiring compliance with section 409(p). As a result of having an ineligible shareholder under section 1361(b)(1)(B), Corporation M ceases to be an S corporation under section 1361 on December 31, 2006.

(v) *Prevention of prohibited allocation*—(A) *Transfer of account to*

non-ESOP. An ESOP may prevent a nonallocation year or a prohibited allocation during a nonallocation year by providing for assets (including S corporation securities) allocated to the account of a disqualified person (or a person reasonably expected to become a disqualified person absent a transfer described in this paragraph (b)(2)(v)(A)) to be transferred into a separate portion of the plan that is not an ESOP, as described in § 54.4975–11(a)(5) of this chapter, or to another plan of the employer that satisfies the requirements of section 401(a) and that is not an ESOP. Any such transfer must be effectuated by an affirmative action taken no later than the date of the transfer, and all subsequent actions (including benefit statements) generally must be consistent with the transfer having occurred on that date. In the event of such a transfer involving S corporation securities, the recipient plan is subject to tax on unrelated business taxable income under section 512.

(B) *Relief from nondiscrimination requirement.* Pursuant to this paragraph (b)(2)(v)(B), if a transfer described in paragraph (b)(2)(v)(A) of this section is made from an ESOP to a separate portion of the plan or to another qualified plan of the employer that is not an ESOP, then both the ESOP and the plan or portion of a plan that is not an ESOP do not fail to satisfy the requirements of § 1.401(a)(4)–4 merely because of the transfer. Further, subsequent to the transfer, that plan will not fail to satisfy the requirements of § 1.401(a)(4)–4 merely because of the benefits, rights, and features with respect to the transferred benefits if those benefits, rights, and features would satisfy the requirements of § 1.401(a)(4)–4 if the mandatory disaggregation rule for ESOPs at § 1.410(b)–7(c)(2) did not apply.

(c) *Nonallocation year.* A year is a nonallocation year if it is described in the general definition in paragraph (c)(1) of this section or if the special rule of paragraph (c)(3) of this section applies.

(1) *General definition.* For purposes of section 409(p) and this section, a *nonallocation year* means a plan year of an ESOP during which, at any time, the ESOP holds any employer securities that are shares of an S corporation and either—

(i) Disqualified persons own at least 50 percent of the number of outstanding shares of stock in the S corporation (including deemed-owned ESOP shares); or

(ii) Disqualified persons own at least 50 percent of the sum of:

(A) The outstanding shares of stock in the S corporation (including deemed-owned ESOP shares); and

(B) The shares of synthetic equity in the S corporation owned by disqualified persons.

(2) *Attribution rules.* For purposes of this paragraph (c), the rules of section 318(a) apply to determine ownership of shares in the S corporation (including deemed-owned ESOP shares) and synthetic equity. However, for this purpose, section 318(a)(4) (relating to options to acquire stock) is disregarded and, in applying section 318(a)(1), the members of an individual's family include members of the individual's family under paragraph (d)(2) of this section. In addition, an individual is treated as owning deemed-owned ESOP shares of that individual notwithstanding the employee trust exception in section 318(a)(2)(B)(i). If the attribution rules in paragraph (f)(1) of this section apply, then the rules of paragraph (f)(1) of this section are applied before (and in addition to) the rules of this paragraph (c)(2).

(3) *Special rule for avoidance or evasion.* (i) Any ownership structure described in paragraph (g)(3) of this section results in a nonallocation year. In addition, each individual referred to in paragraph (g)(3) of this section is treated as a disqualified person and the individual's interest in the separate entity described in paragraph (g)(3) of this section is treated as synthetic equity.

(ii) Pursuant to section 409(p)(7)(B), the Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), may provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p). For any year that is a nonallocation year under this paragraph (c)(3), the Commissioner may treat any person as a disqualified person. See paragraph (g) of this section for guidance regarding when the principal purpose of an ownership structure of an S corporation involving synthetic equity constitutes an avoidance or evasion of section 409(p).

(4) *Special rule for certain stock rights.* (i) For purposes of paragraph (c)(1) of this section, a person is treated as owning stock if the person has an exercisable right to acquire the stock, the stock is both issued and outstanding, and the stock is held by persons other than the ESOP, the S corporation, or a related entity (as defined in paragraph (f)(3) of this section).

(ii) This paragraph (c)(4) applies only if treating persons as owning the shares described in paragraph (c)(4)(i) of this section results in a nonallocation year. This paragraph (c)(4) does not apply to a right to acquire stock of an S corporation held by a shareholder that is subject to Federal income tax that, under § 1.1361–1(l)(2)(iii)(A) or (l)(4)(iii)(C), would not be taken into account in determining if an S corporation has a second class of stock, provided that a principal purpose of the right is not the avoidance or evasion of section 409(p). Under the last sentence of paragraph (f)(2)(i) of this section, this paragraph (c)(4)(ii) does not apply for purposes of determining ownership of deemed-owned ESOP shares or whether an interest constitutes synthetic equity.

(5) *Application with respect to shares treated as owned by more than one person.* For purposes of applying paragraph (c)(1) of this section, if, by application of the rules of paragraph (c)(2), (c)(4), or (f)(1) of this section, any share is treated as owned by more than one person, then that share is counted as a single share and that share is treated as owned by disqualified persons if any of the owners is a disqualified person.

(6) *Effect of nonallocation year.* See paragraph (b) of this section for a prohibition applicable during a nonallocation year. See also section 4979A for an excise tax applicable in certain cases, including section 4979A(a)(3) and (4) which applies during a nonallocation year (whether or not there is a prohibited allocation during the year).

(d) *Disqualified persons.* A person is a disqualified person if the person is described in paragraph (d)(1), (d)(2), or (d)(3) of this section.

(1) *General definition.* For purposes of section 409(p) and this section, a *disqualified person* means any person for whom—

(i) The number of such person's deemed-owned ESOP shares of the S corporation is at least 10 percent of the number of the deemed-owned ESOP shares of the S corporation;

(ii) The aggregate number of such person's deemed-owned ESOP shares and synthetic equity shares of the S corporation is at least 10 percent of the sum of—

(A) The total number of deemed-owned ESOP shares of the S corporation; and

(B) The person's synthetic equity shares of the S corporation;

(iii) The aggregate number of the S corporation's deemed-owned ESOP

shares of such person and of the members of such person's family is at least 20 percent of the number of deemed-owned ESOP shares of the S corporation; or

(iv) The aggregate number of the S corporation's deemed-owned ESOP shares and synthetic equity shares of such person and of the members of such person's family is at least 20 percent of the sum of—

(A) The total number of deemed-owned ESOP shares of the S corporation; and

(B) The synthetic equity shares of the S corporation owned by such person and the members of such person's family.

(2) *Treatment of family members; definition*—(i) *Rule.* Each member of the family of any person who is a disqualified person under paragraph (d)(1)(iii) or (iv) of this section and who owns any deemed-owned ESOP shares or synthetic equity shares is a disqualified person.

(ii) *General definition.* For purposes of section 409(p) and this section, *member of the family* means, with respect to an individual—

(A) The spouse of the individual;

(B) An ancestor or lineal descendant of the individual or the individual's spouse;

(C) A brother or sister of the individual or of the individual's spouse and any lineal descendant of the brother or sister; and

(D) The spouse of any individual described in paragraph (d)(2)(ii)(B) or (C) of this section.

(iii) *Spouse.* A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance is not treated as such individual's spouse under paragraph (d)(2)(ii) of this section.

(3) *Special rule for certain nonallocation years.* See paragraph (c)(3) of this section (relating to avoidance or evasion of section 409(p)) for special rules under which certain persons are treated as disqualified persons.

(4) *Example.* The rules of this paragraph (d) are illustrated by the following examples:

Example 1. (i) *Facts.* An S corporation has 800 outstanding shares, of which 100 are owned by individual O and 700 are held in an employee stock ownership plan (ESOP) during 2006, including 200 shares held in the ESOP account of O, 65 shares held in the ESOP account of participant P, 65 shares held in the ESOP account of participant Q who is P's spouse, and 14 shares held in the ESOP account of R, who is the daughter of P and Q. There are no unallocated suspense account shares in the ESOP. The S corporation has no synthetic equity.

(ii) *Conclusion.* Under paragraph (d)(1)(i) of this section, O is a disqualified person during 2006 because O's account in the ESOP holds at least 10% of the shares owned by the ESOP (200 is 28.6% of 700). During 2006, neither P, Q, nor R is a disqualified person under paragraph (d)(1)(i) of this section, because each of their accounts holds less than 10% of the shares owned by the ESOP. However, each of P, Q, and R is a disqualified person under paragraph (d)(1)(iii) of this section because P and members of P's family own at least 20% of the deemed-owned ESOP shares (144 (the sum of 65, 65 and 14) is 20.6% of 700). As a result, disqualified persons own at least 50% of the outstanding shares of the S corporation during 2006 (O's 100 directly owned shares, O's 200 deemed-owned shares, P's 65 deemed-owned shares, Q's 65 deemed-owned shares, and R's 14 deemed-owned shares are 55.5% of 800).

Example 2. (i) *Facts.* An S corporation has shares that are owned by an ESOP and various individuals. Individuals S and T are married and have a son, U. Individuals V and W are married and have a daughter, X. Individuals U and X are married. Individual V has a brother Y. Their percentages of the deemed-owned ESOP shares of the S corporation are as follows: T has 6%; U has 7%; and V has 8%. Neither S, W, X, nor Y has any deemed-owned ESOP shares and the S corporation has no synthetic equity. However, individual S and individual Y each own directly a number of shares of the outstanding shares of the S corporation.

(ii) *Conclusion.* In this example, individual U is a disqualified person under paragraph (d)(1) of this section (because U's family consists of S, T, U, V, W, and X, and, in the aggregate, those persons own more than 20% of the deemed-owned ESOP shares) and individual X is also a disqualified person under paragraph (d)(1) of this section (because T's family consists of S, T, U, V, W, and X, and, in the aggregate, those persons own more than 20% of the deemed-owned ESOP shares). Further, individuals T and V are each a disqualified person under paragraph (d)(2) of this section because each is a member of a family that includes one or more disqualified persons and each has deemed-owned ESOP shares. However, individuals S, W, and Y are not disqualified persons under this paragraph (d). For example, S does not own more than 10% of the deemed-owned ESOP shares, and S's family, which consists of S, T, U, and X, owns, in the aggregate, only 13% of the deemed-owned ESOP shares (X's parents are not members of S's family because the family members of a person do not include the parents-in-law of the person's descendants). Further, note that, for purposes of determining whether the ESOP has a nonallocation year under paragraph (c) of this section, the shares directly owned by S and Y would be taken into account as shares owned by disqualified persons under the attribution rules in paragraph (c)(2) of this section.

(e) *Deemed-owned ESOP shares.* For purposes of section 409(p) and this section, a person is treated as owning his or her deemed-owned ESOP shares. Deemed-owned ESOP shares owned by a person mean, with respect to any person—

(1) Any shares of stock in the S corporation constituting employer securities that are allocated to such person's account under the ESOP; and

(2) Such person's share of the stock in the S corporation that is held by the ESOP but is not allocated to the account of any participant or beneficiary (with such person's share to be determined in the same proportion as the shares released and allocated from a suspense account, as described at § 54.4975–11(c) and (d) of the Excise Tax Regulations, under the ESOP for the most recently ended plan year for which there were shares released and allocated from a suspense account, or if there has been no such prior release and allocation from a suspense account, then determined in proportion to a reasonable estimate of the shares that would be released and allocated in the first year of a loan repayment).

(f) *Synthetic equity and rights to acquire stock of the S corporation*—(1) *Ownership of synthetic equity.* For purposes of section 409(p) and this section, synthetic equity means the rights described in paragraph (f)(2) of this section. Synthetic equity is treated as owned by the person that has any of the rights specified in paragraph (f)(2) of the section. In addition, the attribution rules as set forth in paragraph (c)(2) of this section apply for purposes of attributing ownership of synthetic equity.

(2) *Synthetic equity*—(i) *Rights to acquire stock of the S corporation*—(A) *General rule.* Synthetic equity includes any stock option, warrant, restricted stock, deferred issuance stock right, stock appreciation right payable in stock, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Rights to acquire stock in an S corporation with respect to stock that is, at all times during the period when such rights are effective, both issued and outstanding, and held by a person other than the ESOP, the S corporation, or a related entity are not synthetic equity but only if that person is subject to federal income taxes. (See also paragraph (c)(4) of this section.)

(B) *Exception for certain rights of first refusal.* A right of first refusal to acquire stock held by an ESOP is not treated as a right to acquire stock of an S corporation under this paragraph if the right to acquire stock would not be taken into account under § 1.1361–1(l)(2)(iii)(A) in determining if an S corporation has a second class of stock

and the price at which the stock is acquired under the right of first refusal is not less than the price determined under section 409(h). See § 54.4975–11(d)(5) of the Excise Tax Regulations. The right of first refusal must also comply with the requirements of § 54.4975–7(b)(9) of the Excise Tax Regulations. This paragraph (f)(2)(i)(B) does not apply if, based on the facts and circumstances, the Commissioner finds that the right to acquire stock held by the ESOP constitutes an avoidance or an evasion of section 409(p). See also section 408(d) of ERISA, under which the exemption provided by section 408(e) of ERISA (and the related exemption at section 4975(d)(13) of the Code) does not apply to an owner-employee, including an employee or officer of an S corporation who is a 5 percent owner.

(ii) *Special rule for certain stock rights.* Synthetic equity also includes a right to a future payment (payable in cash or any other form other than stock of the S corporation) from an S corporation that is based on the value of the stock of the S corporation, such as appreciation in such value. Thus, for example, synthetic equity includes a stock appreciation right with respect to stock of an S corporation that is payable in cash or a phantom stock unit with respect to stock of an S corporation that is payable in cash.

(iii) *Rights to acquire interests in or assets of an S corporation or a related entity.* Synthetic equity includes a right to acquire stock or other similar interests in a related entity to the extent of the S corporation's ownership. Synthetic equity also includes a right to acquire assets of an S corporation or a related entity other than either rights to acquire goods, services, or property at fair market value in the ordinary course of business or fringe benefits excluded from gross income under section 132.

(iv) *Special rule for nonqualified deferred compensation.* (A) Synthetic equity also includes any of the following with respect to an S corporation or a related entity: any remuneration to which section 404(a)(5) applies; remuneration for which a deduction would be permitted under section 404(a)(5) if separate accounts were maintained; any right to receive property, as defined in § 1.83–3(e) of the Income Tax Regulations (including a payment to a trust described in section 402(b) or to an annuity described in section 403(c)) in a future year for the performance of services; any transfer of property in connection with the performance of services to which section 83 applies to the extent that the property is not substantially vested within the meaning of § 1.83–3(i) by the end of the plan year in which transferred; and a split-dollar life insurance arrangement under § 1.61–22(b) entered into in connection with the performance of services (other than one under which, at all times, the only economic benefit that will be provided under the arrangement is current life insurance protection as described in § 1.61–22(d)(3)). Synthetic equity also includes any other remuneration for services under a plan, method, or arrangement deferring the receipt of compensation to a date that is after the 15th day of the 3rd calendar month after the end of the entity's taxable year in which the related services are rendered. However, synthetic equity does not include benefits under a plan that is an eligible retirement plan within the meaning of section 402(c)(8)(B).

(B) For purposes of applying paragraph (f)(2)(iv)(A) of this section with respect to an ESOP, synthetic equity does not include any interest described in such paragraph (f)(2)(iv)(A) of this section to the extent that—

(*1*) The interest is nonqualified deferred compensation (within the meaning of section 3121(v)(2)) that was outstanding on December 17, 2004;

(*2*) The interest is an amount that was taken into account (within the meaning of § 31.3121(v)(2)–1(d) of this chapter) prior to January 1, 2005, for purposes of taxation under chapter 21 of the Internal Revenue Code (or income attributable thereto); and

(*3*) The interest was held before the first date on which the ESOP acquires any employer securities.

(v) *No overlap among shares of deemed-owned ESOP shares or synthetic equity.* Synthetic equity under this paragraph (f)(2) does not include shares that are deemed-owned ESOP shares (or any rights with respect to deemed-owned ESOP shares to the extent such rights are specifically provided under section 409(h)). In addition, synthetic equity under a specific subparagraph of this paragraph (f)(2) does not include anything that is synthetic equity under a preceding provision of paragraph (f)(2)(i), (ii), (iii), or (iv) of this section.

(3) *Related entity.* For purposes of this paragraph (f), *related entity* means any entity in which the S corporation holds an interest and which is a partnership, a trust, an eligible entity that is disregarded as an entity that is separate from its owner under § 301.7701–3 of this chapter, or a qualified subchapter S subsidiary under section 1361(b)(3).

(4) *Number of synthetic shares*—(i) *Synthetic equity determined by reference to S corporation shares.* In the case of synthetic equity that is determined by reference to shares of stock of the S corporation, the person who is entitled to the synthetic equity is treated as owning the number of shares of stock deliverable pursuant to such synthetic equity. In the case of synthetic equity that is determined by reference to shares of stock of the S corporation, but for which payment is made in cash or other property (besides stock of the S corporation), the number of shares of synthetic equity treated as owned is equal to the number of shares of stock having a fair market value equal to the cash or other property (disregarding lapse restrictions as described in § 1.83–3(i)). Where such synthetic equity is a right to purchase or receive S corporation shares, the corresponding number of shares of synthetic equity is determined without regard to lapse restrictions as described in § 1.83–3(i) or to any amount required to be paid in exchange for the shares. Thus, for example, if a corporation grants an employee of an S corporation an option to purchase 100 shares of the corporation's stock, exercisable in the future only after the satisfaction of certain performance conditions, the employee is the deemed owner of 100 synthetic equity shares of the corporation as of the date the option is granted. If the same employee were granted 100 shares of restricted S corporation stock (or restricted stock units), subject to forfeiture until the satisfaction of performance or service conditions, the employee would likewise be the deemed owner of 100 synthetic equity shares from the grant date. However, if the same employee were granted a stock appreciation right with regard to 100 shares of S corporation stock (whether payable in stock or in cash), the number of synthetic equity shares the employee is deemed to own equals the number of shares having a value equal to the appreciation at the time of measurement (determined without regard to lapse restrictions).

(ii) *Synthetic equity determined by reference to shares in a related entity.* In the case of synthetic equity that is determined by reference to shares of stock (or similar interests) in a related entity, the person who is entitled to the synthetic equity is treated as owning shares of stock of the S corporation with the same aggregate value as the number of shares of stock (or similar interests) of the related entity (with such value determined without regard to any lapse restriction as defined at § 1.83–3(i)).

(iii) *Other synthetic equity*—(A) *General rule.* In the case of any synthetic equity to which neither

paragraph (f)(4)(i) of this section nor paragraph (f)(4)(ii) of this section apply, the person who is entitled to the synthetic equity is treated as owning on any date a number of shares of stock in the S corporation equal to the present value (on that date) of the synthetic equity (with such value determined without regard to any lapse restriction as defined at § 1.83–3(i)) divided by the fair market value of a share of the S corporation's stock as of that date.

(B) *Use of annual or more frequent determination dates.* A year is a nonallocation year if the thresholds in paragraph (c) of this section are met at any time during that year. However, for purposes of this paragraph (f)(4)(iii), an ESOP may provide that the number of shares of S corporation stock treated as owned by a person who is entitled to synthetic equity to which this paragraph (f)(4)(iii) applies is determined annually (or more frequently), as of the first day of the ESOP's plan year or as of any other reasonable determination date or dates during a plan year. If the ESOP so provides, the number of shares of synthetic equity to which this paragraph (f)(4)(iii) applies that are treated as owned by that person for any period from a given determination date through the date immediately preceding the next following determination date is the number of shares treated as owned on the given determination date.

(C) *Use of triennial recalculations.* (*1*) Although an ESOP must have a determination date that is no less frequent than annually, if the terms of the ESOP so provide, then the number of shares of synthetic equity with respect to grants of synthetic equity to which this paragraph (f)(4)(iii) applies may be fixed for a specified period from a determination date identified under the ESOP through the day before a determination date that is not later than the third anniversary of the identified determination date. Thus, the ESOP must provide for the number of shares of synthetic equity to which this paragraph (f)(4)(iii) applies to be re-determined not less frequently than every three years, based on the S corporation share value on a determination date that is not later than the third anniversary of the identified determination date and the aggregate present value of the synthetic equity to which this paragraph (f)(4)(iii) applies (including all grants made during the three-year period) on that determination date.

(*2*) However, additional accruals, allocations, or grants (to which this paragraph (f)(4)(iii) applies) that are made during such three-year period are taken into account on each determination date during that period, based on the number of synthetic equity shares resulting from the additional accrual, allocation, or grant (determined as of the determination date on or next following the date of the accrual, allocation, or grant). See *Example 3* of paragraph (h) of this section for an example illustrating this paragraph (f)(4)(iii)(C).

(*3*) If, as permitted under this paragraph (f)(4)(iii)(C), an ESOP provides for the number of shares of synthetic equity to be fixed for a specified period from a determination date to a subsequent determination date, then that subsequent determination date can be changed to a new determination date, subject to the following conditions:

(*i*) The change in the subsequent determination date must be effectuated through a plan amendment adopted before the new determination date;

(*ii*) The new determination date must be earlier than the prior determination date (that is, the new determination date must be earlier than the determination date applicable in the absence of the plan amendment);

(*iii*) The conditions in paragraph (f)(4)(iii)(C)(*2*) of this section must be satisfied measured from the new determination date; and

(*iv*) Except to the extent permitted by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), the change must be adopted in connection with either a change in the plan year of the ESOP or a merger, consolidation, or transfer of plan assets of the ESOP under section 414(l) (and the new determination date must consistent with that plan year change or section 414(l) event).

(4) *Conditions for application of rules.* This paragraph (f)(4)(iii)(C) only applies with respect to grants of synthetic equity to which this paragraph (f)(4)(iii) applies. In addition, paragraph (f)(4)(iii)(C) of this section applies only if the fair market value of a share of the S corporation securities on any determination date is not unrepresentative of the value of the S corporation securities throughout the rest of the plan year and only if the terms of the ESOP include provisions conforming to paragraph (f)(4)(iii)(C)(*1*) of this section which are consistently used by the ESOP for all persons. In addition, paragraph (f)(4)(iii)(C)(*1*) of this section applies only if the terms of the ESOP include provisions conforming to paragraphs (f)(4)(iii)(C)(*1*) of this section which are consistently used by the ESOP for all persons.

(iv) *Adjustment of number of synthetic equity shares where ESOP owns less than 100 percent of S corporation.* The number of synthetic shares otherwise determined under this paragraph (f)(4) is decreased ratably to the extent that shares of the S corporation are owned by a person who is not an ESOP and who is subject to Federal income taxes. For example, if an S corporation has 200 outstanding shares, of which individual A owns 50 shares and the ESOP owns the other 150 shares, and individual B would be treated under this paragraph (f)(4) as owning 100 synthetic equity shares of the S corporation but for this paragraph (f)(4)(iv), then, under the rule of this paragraph (f)(4)(iv), the number of synthetic shares treated as owned by B under this paragraph (f)(4) is decreased from 100 to 75 (because the ESOP only owns 75 percent of the outstanding stock of the S corporation, rather than 100 percent).

(v) *Special rule for shares with greater voting power than ESOP shares.* Notwithstanding any other provision of this paragraph (f)(4), if a synthetic equity right includes (directly or indirectly) a right to purchase or receive shares of S corporation stock that have per-share voting rights greater than the per-share voting rights of one or more shares of S corporation stock held by the ESOP, then the number of shares of deemed owned synthetic equity attributable to such right is not less than the number of shares that would have the same voting rights if the shares had the same per-share voting rights as shares held by the ESOP with the least voting rights. For example, if shares of S corporation stock held by the ESOP have one voting right per share, then an individual who holds an option to purchase one share with 100 voting rights is treated as owning 100 shares of synthetic equity.

(g) *Avoidance or evasion of section 409(p) involving synthetic equity*—(1) *General rule.* Paragraph (g)(2) of this section sets forth a standard for determining whether the principal purpose of the ownership structure of an S corporation involving synthetic equity constitutes an avoidance or evasion of section 409(p). Paragraph (g)(3) of this section identifies certain specific ownership structures that constitute an avoidance or evasion of section 409(p). See also paragraph (c)(3) of this section for a rule under which the ownership structures in paragraph (g)(3) of this section result in a nonallocation year for purposes of section 409(p).

(2) *Standard for determining when there is an avoidance or evasion of*

section 409(p) involving synthetic equity. For purposes of section 409(p) and this section, whether the principal purpose of the ownership structure of an S corporation involving synthetic equity constitutes an avoidance or evasion of section 409(p) is determined by taking into account all the surrounding facts and circumstances, including all features of the ownership of the S corporation's outstanding stock and related obligations (including synthetic equity), any shareholders who are taxable entities, and the cash distributions made to shareholders, to determine whether, to the extent of the ESOP's stock ownership, the ESOP receives the economic benefits of ownership in the S corporation that occur during the period that stock of the S corporation is owned by the ESOP. Among the factors indicating that the ESOP receives those economic benefits include shareholder voting rights, the right to receive distributions made to shareholders, and the right to benefit from the profits earned by the S corporation, including the extent to which actual distributions of profits are made from the S corporation to the ESOP and the extent to which the ESOP's ownership interest in undistributed profits and future profits is subject to dilution as a result of synthetic equity. For example, the ESOP's ownership interest is not subject to dilution if the total amount of synthetic equity is a relatively small portion of the total number of shares and deemed-owned shares of the S corporation.

(3) *Specific transactions that constitute an avoidance or evasion of section 409(p) involving segregated profits.* Taking into account the standard in paragraph (g)(2) of this section, the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p) in any case in which—

(i) The profits of the S corporation generated by the business activities of a specific individual or individuals are not provided to the ESOP, but are instead substantially accumulated and held for the benefit of the individual or individuals on a tax-deferred basis within an entity related to the S corporation, such as a partnership, trust, or corporation (such as in a subsidiary that is a disregarded entity), or any other method that has the same effect of segregating profits for the benefit of such individual or individuals (such as nonqualified deferred compensation described in paragraph (f)(2)(iv) of this section);

(ii) The individual or individuals for whom profits are segregated have rights to acquire 50 percent or more of those profits directly or indirectly (for example, by purchase of the subsidiary); and

(iii) A nonallocation year would occur if this section were separately applied with respect to either the separate entity or whatever method has the effect of segregating profits of the individual or individuals, treating such entity as a separate S corporation owned by an ESOP (or in the case of any other method of segregation of profits by treating those profits as the only assets of a separate S corporation owned by an ESOP).

(h) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. Relating to determination of disqualified persons and nonallocation year if there is no synthetic equity. (i) *Facts.* Corporation X is a calendar year S corporation that maintains an ESOP. X has a single class of common stock, of which there are a total of 1,200 shares outstanding. X has no synthetic equity. In 2006, individual A, who is not an employee of X (and is not related to any employee of X), owns 100 shares directly, B, who is an employee of *X*, owns 100 shares directly, and the remaining 1,000 shares are owned by an ESOP maintained by X for its employees. The ESOP's 1,000 shares are allocated to the accounts of individuals who are employees of X (none of whom are related), as set forth in columns 1 and 2 in the following table:

1 Shareholders	2 Deemed-owned ESOP shares (total of 1,000)	3 Percentage deemed-owned ESOP shares	4 Disqualified person
B	330	33	Yes.
C	145	14.5	Yes.
D	75	7.5	No.
E	30	3	No.
F	20	2	No.
Other participants	[1] 400	([2])	No.

[1] None exceed 10 shares.
[2] 1% or less.

(ii) *Conclusion with respect to disqualified persons.* As shown in column 4 in the table contained in paragraph (i) of *Example 1*, individuals B and C are disqualified persons for 2006 under paragraph (d)(1) of this section because each owns at least 10% of X's deemed-owned ESOP shares. However, the synthetic equity shares owned by any person do not affect the calculation for any other person's ownership of shares.

(iii) *Conclusion with respect to nonallocation year.* 2006 is not a nonallocation year under section 409(p) because disqualified persons do not own at least 50% of X's outstanding shares (the 100 shares owned directly by B, B's 330 deemed-owned ESOP shares, plus C's 145 deemed-owned ESOP shares equal only 47.9% of the 1,200 outstanding shares of X).

Example 2. Relating to determination of disqualified persons and nonallocation year if there is synthetic equity. (i) *Facts.* The facts are the same as in *Example 1*, except that, as shown in column 4 of the table in this *Example 2*, individuals E and F have options to acquire 110 and 130 shares, respectively, of the common stock of X from X:

1 Shareholder	2 Deemed-owned ESOP shares (total of 1,000)	3 Percentage deemed-owned ESOP shares	4 Options (240)	5 Shareholder percentage of deemed-owned ESOP plus synthetic equity shares	6 Disqualified person
B	330	33			Yes (col. 3).

1 Shareholder	2 Deemed-owned ESOP shares (total of 1,000)	3 Percentage deemed-owned ESOP shares	4 Options (240)	5 Shareholder percentage of deemed-owned ESOP plus synthetic equity shares	6 Disqualified person
C	145	14.5			Yes (col. 3).
D	75	7.5			No.
E	30	3	110	11.1% ([30+ 91.7] divided by 1,091.7).	Yes (col. 5).
F	20	2	130	11.6% ([20 +108.3] divided by 1,108.3).	Yes (col. 5).
Other participants	[1] 400	([2])			No.

[1] None exceeds 10 shares.
[2] 1% or less.

(ii) *Conclusion with respect to disqualified persons.* Individual E's synthetic equity shares are counted in determining whether E is a disqualified person for 2006, and individual F's synthetic equity shares are counted in determining whether F is a disqualified person for 2006. Applying the rule of paragraph (f)(4)(iv) of this section, E's option to acquire 110 shares of the S corporation converts under paragraph (f)(4)(iv) of this section, into 91.7 shares of synthetic equity (110 times the ratio of the 1,000 deemed-owned ESOP shares to the sum of the 1,000 deemed-owned ESOP shares plus the 200 shares held outside the ESOP by A and B). Similarly, F's option to acquire 130 shares of the S corporation converts into 108.3 shares of synthetic equity (130 times the ratio of the 1,000 deemed-owned ESOP shares to the sum of the 1,000 deemed-owned ESOP shares plus the 200 shares held outside the ESOP by A and B). However, the synthetic equity shares owned by any person do not affect the calculation for any other person's ownership of shares. Accordingly, as shown in column 6 in the table contained in paragraph (i) of *Example 2*, individuals B, C, E, and F are disqualified persons for 2006.

(iii) *Conclusion with respect to nonallocation year.* The 100 shares owned directly by B, B's 330 deemed-owned ESOP shares, C's 145 deemed-owned ESOP shares, E's 30 deemed-owned ESOP shares, E's 91.7 synthetic equity shares, F's 20 deemed-owned ESOP shares, plus F's 108.3 synthetic equity shares total 825, which equals 58.9% of 1,400, which is the sum of the 1,200 outstanding shares of X and the 200 shares of synthetic equity shares of X held by disqualified persons. Thus, 2006 is a nonallocation year for X's ESOP under section 409(p) because disqualified persons own at least 50% of the total shares of outstanding stock of X and the total synthetic equity shares of X held by disqualified persons. In addition, independent of the preceding conclusion, 2006 would be a nonallocation year because disqualified persons own at least 50% of X's outstanding shares because the 100 shares owned directly by B, B's 330 deemed-owned ESOP shares, C's 145 deemed-owned ESOP shares, E's 30 deemed-owned ESOP shares, plus F's 20 deemed-owned ESOP shares equal 52.1% of the 1,200 outstanding shares of X.

Example 3. Relating to determination of number of shares of synthetic equity. (i) *Facts.* Corporation Y is a calendar year S corporation that maintains an ESOP. Y has a single class of common stock, of which there are a total of 1,000 shares outstanding, all of which are owned by the ESOP. Y has no synthetic equity, except for four grants of nonqualified deferred compensation that are made to an individual during the period from 2005 through 2011, as set forth in column 2 in the following table. The ESOP provides for the special rules in paragraph (f)(4)(iii) of this section to determine the number of shares of synthetic equity owned by that individual with a determination date of January 1 and the triennial rule redetermining value, as shown in columns 4 and 5:

1 Determination date	2 Present value of nonqualified deferred compensation on determination date	3 Share value on determination date	4 New shares of synthetic equity on determination date	5 Aggregate number of synthetic equity shares on determination date
January 1, 2005	A grant is made on January 1, 2005, with a present value of $1,000. An additional grant of nonqualified deferred compensation with a present value of $775 is made on March 1, 2005.	$10 per share	100	100
January 1, 2006	An additional grant is made on December 31, 2005, which has a present value of $800 on January 1, 2006. The March 1, 2005, grant has a present value on January 1, 2006, of $800.	$8 per share	200	300
January 1, 2007	No new grants made	$12 per share		300
January 1, 2008	An additional grant is made on December 31, 2007, which has a present value of $3,000 on January 1, 2008. The grants made during 2005 through 2007 have an aggregate present value on January 1, 2008, of $3,750.	$15 per share	200	450
January 1, 2009	No new grants are made	$11 per share		450
January 1, 2010	No new grants are made	$22 per share		450
January 1, 2011	No new grants are made. The grants made during 2005 through 2008 have an aggregate present value on January 1, 2011, of $7,600.	$20 per share		380

(ii) *Conclusion.* The grant made on January 1, 2005, is treated as 100 shares until the determination date in 2008. The grant made on March 1, 2005, is not taken into account until the 2006 determination date and its present value on that date, along with the then present value of the grant made on December 31, 2005, is treated as a number of shares that are based on the $8 per share value on the 2006 determination date, with the resulting number of shares continuing to apply until the determination date in 2008. On the January 1, 2008, determination date, the grant made on the preceding day is taken into account at its present value of $3,000 on January 1, 2008 and the $15 per share value on that date with the resulting number of shares (200) continuing to apply until the next determination date. In addition, on the January 1, 2008, determination date, the number of shares determined under other grants made between January 1, 2005 and December 31, 2007, must be revalued. Accordingly, the aggregate value of all nonqualified deferred compensation granted during that period is determined to be $3750 on January 1, 2008, and the corresponding number of shares of synthetic equity based on the $15 per share value is determined to be 250 shares on the 2008 determination date, with the resulting aggregate number of shares (450) continuing to apply until the determination date in 2011. On the January 1, 2011, determination date, the aggregate value of all nonqualified deferred compensation is determined to be $7,600 and the corresponding number of shares of synthetic equity based on the $20 per share value on the 2011 determination date is determined to be 380 shares (with the resulting number of shares continuing to apply until the day before the determination date in 2014, assuming no further grants are made).

(i) *Effective dates*—(1) *Statutory effective date.* (i) Except as otherwise provided in paragraph (i)(1)(ii) of this section, section 409(p) applies for plan years ending after March 14, 2001.

(ii) If an ESOP holding stock in an S corporation was established on or before March 14, 2001, and the election under section 1362(a) with respect to that S corporation was in effect on March 14, 2001, section 409(p) applies for plan years beginning on or after January 1, 2005.

(2) *Regulatory effective date.* This section applies for plan years beginning on or after January 1, 2006. For plan years beginning before January 1, 2006, § 1.409(p)–1T (as it appeared in the April 1, 2005, edition of 26 CFR part 1) applies.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: November 30, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–21669 Filed 12–19–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–049–FOR, Amendment No. XXXVI]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the North Dakota regulatory program (the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).

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

FOR FURTHER INFORMATION CONTACT: Jeff Fleischman, Telephone: 307/261–6550, E-mail address: *JFleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.10, 934.12, 934.13, 934.15 and 934.30.

II. Submission of the Proposed Amendment

By letter dated May 24, 2006, North Dakota sent us an amendment to its program (Amendment number XXXVI, Administrative Record No. ND–KK–01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise are: Rules about data requirements for proving reclamation success, and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. Other changes are minor, including provisions that relate to lease documents in mining permits; newspaper notices for permit applications; copies of advertisements and other information needed for bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and correcting a cross reference error in a rule on roads. With these minor changes, North Dakota proposes to revise its program to improve operational efficiency. Specifically, North Dakota proposes to:

Add language to NDAC 69–05.2–06–03 (right-of-entry requirements) to allow a permittee to delete coal leases from the permit when mining on a tract covered by a lease is completed and the lease is no longer needed to show a right-of-entry. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee the right of entry must be added to the permit.

Delete language to NDAC 69–05.2–10–01 that required the newspaper notice for permit applications include a reference to the U.S. Geological Survey map that contains the area; and add language that limits the listing of coal owners in the notice to those that will be affected by the mining activities.

Revise the bond release application requirements in North Dakota's coal rules at NDAC 69–05.2–12–12 to require the filing of a copy of the newspaper advertisement instead of requiring the submittal of affidavits of publication.

Revise sedimentation pond inspection requirements in North Dakota's coal rules at NDAC 69–05.2–16–09 to make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by a registered professional engineer.

Revise revegetation success standards at NDAC 69–05.2–22–07 to allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language was also proposed for woodland and shelterbelt standards that addresses the replanting of trees and shrubs during the liability period and to allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. Finally, the North Dakota alternative to meeting the revegetation success standards for the last two consecutive growing seasons of the responsibility period was abolished.

Revise the coal rules to correct a reference to the road performance standards at NDAC 69–05.2–24–01.

We announced receipt of the proposed amendment in the July 31, 2006, **Federal Register** (71 FR 43085). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. ND–KK–04).

We did not receive any comments. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 30, 2006.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, as described below.

A. Minor Revisions to North Dakota's Rules

North Dakota proposed minor changes to the following previously-approved rules:

NDAC 69–05.2–24–01, Performance Standards—Roads—General requirements.

NDAC 69–05.2–10–01(3) and (4), Permit applications—public notices of filing.

Because these changes are minor, we find that they will not make North Dakota's coal rules less effective than the corresponding Federal regulations.

B. Revisions to North Dakota's Rules Containing Language That Is the Same as or Similar to Corresponding Provisions of the Federal Regulations

North Dakota proposed revisions to the following rule containing language that is the same as or similar to the corresponding sections of the Federal regulations.

NDAC 69–05.2–22–07 (30 CFR 817.116), Revegetation—Standards for Success.

Because this proposed rule contains language that is the same as or similar to the corresponding Federal regulations, we find it is no less effective than the corresponding Federal regulations.

C. Revisions to North Dakota's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. NDAC 69–05.2–16–09.(19). Performance Standards—Hydrologic Balance—Sedimentation Ponds—Inspections

The proposed changes to North Dakota's rules on impoundment inspections are being made to clarify the inspection requirements that apply when ponds are being constructed, the requirements for certification by a registered professional engineer following construction, and the requirements for inspections by a registered professional engineer.

Because North Dakota's proposed rule is nearly identical and substantively similar to the corresponding Federal regulations at 30 CFR 816.49(a)(11)(ii) we find that it is no less effective than the corresponding Federal regulation.

2. NDAC 69–05.2–12–12. Release of Performance Bond—Bond Release Application

North Dakota proposed two changes to this rule involving bond release. The first involves the requirement to submit ''proof of publication'' of the announcement of the application for bond release.

Instead, North Dakota proposes that permittees will be required to submit a ''copy of the newspaper advertisement that was published.'' This change is no less effective than the Federal rule at 30 CFR 800.40(a)(2) which requires submission of a copy of the newspaper advertisement within 30 days after an application for bond release has been filed with the regulatory authority.

The second change to this rule is a simple cross-reference to another North Dakota provision that enumerates the additional information that permittees must include in their application when a premine water delivery system will not be replaced. This provision is not found in the Federal rules but is consistent with them.

D. Revisions to North Dakota's Rules With No Corresponding Federal Regulations

NDAC 69–05.2–06–03. Permit Applications—Right of Entry and Operation Information

This addition to North Dakota's rules does not have a Federal counterpart. It simply requires the permit applicant to submit certified copies of documents showing the right-to-mine or to otherwise disturb the surface of lands within the proposed permit area. It is more stringent than the Federal rules since the Federal rules have no such requirement.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. ND–KK–03), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record No. ND–KK–03). We did not receive any.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

We note that none of the proposed changes relate to air or water quality standards. Nevertheless, under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. ND–KK–03). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that

may have an effect on historic properties. On June 1, 2006, we requested comments on North Dakota's amendment (Administrative Record No. ND–KK–03), but neither responded to our request.

V. OSM's Decision

Based on the above findings we approve North Dakota's May 24, 2006, amendment.

We approve the rules as proposed by North Dakota with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 22, 2006.

Allen D. Klein,

Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—NORTH DAKOTA

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	*
May 24, 2006	December 20, 2006	NDAC 69–05.2–06–03 NDAC 69–05.2–10–01 NDAC 69–05.2–12–12 NDAC 69–05.2–16–09 NDAC 69–05.2–22–07 NDAC 69–05.2–24–01

[FR Doc. E6–21716 Filed 12–19–06; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Monetary Offices

31 CFR Part 82

Prohibition on the Exportation, Melting, or Treatment of 5-Cent and One-Cent Coins

AGENCY: United States Mint, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: To protect the coinage of the United States, this interim rule prohibits the exportation, melting, and treatment of 5-cent and one-cent coins. This interim rule is issued pursuant to 31 U.S.C. 5111(d), which authorizes the Secretary of the Treasury to prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States. This interim rule is effective until April 14, 2007. The public is invited to comment until January 14, 2007. Thereafter, but prior to April 14, 2007, the Department of the Treasury will reevaluate the need for the rule in light of the public comments, and other relevant factors. Upon consideration of the public comments and other relevant factors, the Department of the Treasury may issue a final rule extending or modifying the provisions of this interim rule, or may allow the interim rule to expire without extension.

DATES: *Effective Date:* This interim rule is effective December 20, 2006 through April 14, 2007.

Expiration Date: Unless extended by a further rulemaking document published in the **Federal Register**, this interim rule expires April 14, 2007.

Comment Due Date: January 19, 2007.

ADDRESSES: Send written comments to Daniel P. Shaver, Chief Counsel, Office of Chief Counsel, United States Mint, 801 9th Street, NW., Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Kristie Bowers, Attorney-Advisor, United States Mint at (202) 354–7631 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Background

Section 5111(d) of title 31, United States Code, authorizes the Secretary of the Treasury to prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States. In enacting 31 U.S.C. 5111(d), Congress has conferred upon the Secretary of the Treasury broad discretion to ensure that he can effectively carry out his statutory duties to protect the Nation's coinage and to ensure that sufficient quantities of coins are in circulation to meet the needs of the United States. Pursuant to this authority, the Secretary of the Treasury has determined that, to protect the coinage of the United States, it is necessary to generally prohibit the exportation, melting, or treatment of 5-cent and one-cent coins minted and issued by the United States. The Secretary has made this determination because the values of the metal contents of 5-cent and one-cent coins are in excess of their respective face values, raising the likelihood that these coins will be the subject of recycling and speculation. In fact, the Department has received anecdotal reports suggesting that this activity may already be occurring. The prohibitions contained in this interim rule apply only to 5-cent and one-cent coins.

The primary reason for limiting the melting, exportation, and treatment of 5-cent and one-cent coins is to avoid a shortage of these coins in circulation. Under 31 U.S.C. 5111(a)(1), the core responsibility of the Secretary of the Treasury with respect to the Nation's coinage is to ''mint and issue coins * * * in amounts the Secretary decides are necessary to meet the needs of the United States.'' In meeting the needs for low-value circulating coin denominations, the United States Mint estimates that it augments and replenishes only about four percent of the Nation's 5-cent coin supply, and only about eight percent of the one-cent coin supply, each year. Accordingly, the extraction of even relatively small amounts of these coins from circulation could have a significant impact on the United States Mint's ability to produce

sufficient volumes of these coins to meet the needs of commerce. Another reason for limiting the melting, exportation, and treatment of 5-cent and one-cent coins is that the United States Mint, and ultimately the United States Treasury and the taxpayer, would have to bear the additional cost of replenishing these coins. At prevailing prices, and based on existing commercial coin counting and recirculation capacities, the cost to the United States Treasury in replenishing 5-cent and one-cent coins taken out of circulation and diverted as scrap metal for recycling could be well in excess of $1 million per day, and volumes required for replenishment could be in excess of the United States Mint's capacity.

The authority granted to the Secretary by the Coinage Act of 1965 has been invoked on two prior occasions; in both instances the regulations were implemented as interim rules that were later made permanent until rescinded. In 1967, during the transition from silver to cupro-nickel clad coinage, then-Secretary Fowler authorized regulations that prohibited the exportation, melting, or treatment of all U.S. coins containing silver. 32 FR 7496 (May 20, 1967). In 1974, to stem the unprecedented increase in demand for one-cent coins attributable to speculation that the metal content of the coin would soon exceed its face value, then-Secretary Shultz invoked this authority, approving regulations that limited the exportation, melting, or treatment of one-cent coins. 39 FR 13881 (April 18, 1974). These prior regulations were rescinded in 1969 and 1978, respectively, when the prohibitions were no longer necessary to protect the Nation's coinage. 34 FR 7704 (May 15, 1969); 43 FR 24691 (June 7, 1978).

The interim rule provides limited exceptions to the prohibitions. First, exportation and any of the otherwise prohibited activities may be authorized by license granted by the Secretary (or designee). Second, the interim rule also provides exceptions for coins exported in small amounts for legitimate use as money or for numismatic purposes, and for small amounts of coins carried on the person, or in the personal effects, of individuals leaving the country. Finally, there is an exception for coins treated in small quantities for educational, amusement, novelty, jewelry, and similar purposes.

The Secretary of the Treasury has delegated to the Director of the United States Mint the authority to issue these regulations and to approve exceptions by license.

II. Public Comments

The public is invited to submit written comments concerning any aspect of this interim rule. Comments should be received by January 14, 2007. All comments will be available for public inspection. To inspect comments, contact Kristie Bowers, Attorney-Advisor, United States Mint at (202) 354–7631 (not a toll-free call).

III. Procedural Requirements

This rule is not a significant regulatory action for the purposes of Executive Order 12866. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Pursuant to 5 U.S.C. 553(b)(B), it has been determined that notice and public procedure regarding this interim rule are contrary to the public interest. Issuing this rule for notice and comment rulemaking would only serve to hasten recycling and speculation in 5-cent and one-cent coins, thereby exacerbating the very problems this interim rule seeks to prevent. As stated above, the Secretary of the Treasury has determined that the prohibitions contained in this interim rule are necessary to protect the coinage of the United States for two principal reasons.

First, the economic burden on the Treasury, and ultimately on taxpayers, occasioned by the need to replace 5-cent and one-cent coins withdrawn from circulation if these regulations are not implemented could be in excess of $1 million per day. At current metal prices, the profit potential from recycling 5-cent and one-cent coins to reclaim copper, nickel and zinc is sufficiently lucrative to effect these dangers in a very short time period. If this were to happen, delaying the implementation of this rule for notice and comment will have undermined the Secretary's ability to fulfill his statutory duty to protect the Nation's coinage. 31 U.S.C. 5111(d). Rather, protecting the 5-cent and one-cent coins currently in circulation, without delay, is essential to avoiding the destruction of coins that would result in high costs to the Government. *Cf. Arteaga* v. *Lyng*, 660 F. Supp 1142, 1147 (M.D. Fla. 1987).

Second, the potential pace and volume at which such withdrawals could occur would exceed the United States Mint's replenishment capacity and potentially cause a circulating coin shortage. In this regard, employing a notice of proposed rulemaking will serve its intended purposes—that is, to inform the public that the Secretary is considering a limitation on the melting, treatment, and exportation of 5-cent and one-cent coins because the value of their metal content makes it economical to recycle as scrap metal. However, such a notice of proposed rulemaking also would have a significant unintended, but very predictable, consequence—namely, it would serve as an official notice to the public that until such a regulation is finally implemented, the melting, treatment, and exportation of 5-cent and one-cent coins not only is profitable, but also is unquestionably legal. The numerous inquiries that the United States Mint receives, asking whether it is legal to melt one-cent coins, suggests that there is a widely-held belief among the general public that destroying United States coins is either unlawful or, at the very least, unseemly. However, once a notice of proposed rulemaking publicly reinforces that there is no current prohibition against melting the Nation's coins for profit, the sale of massive quantities of 5-cent coins and one-cent coins to recycling firms as scrap metal can be accomplished very quickly, causing a precipitous shortage of these denominations. In this regard, the Attorney General's Manual indicates, as to the ''public interest'' ground for finding good cause under 5 U.S.C. 553(b)(3), that it '' 'connotes a situation in which the interest of the public would be defeated by any requirement of advance notice,' as when announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent.'' See United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act at 31, quoted in *Utility Solid Waste Activities Group* v. *Environmental Protection Agency*, 236 F.3d 749, 755 (D.C. Cir. 2001). Similarly, ''in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.'' *Mobil Oil Corp.* v. *Department of Energy*, 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983). Accordingly, delaying this rule for notice and comment would be contrary to the public interest because it could impair the Secretary's mission to ensure that there are sufficient quantities of one-cent and 5-cent coins in circulation to meet the needs of the United States. See 31 U.S.C. 5111(a)(1).

While these concerns are predictive in nature, and therefore not susceptible of strict factual proof, in the judgment of the Department, the risk to the public's confidence in the integrity and reliability of the United States'

monetary system, in the event that precipitous speculation or recycling causes a shortage of one-cent or 5-cent coins, is not insubstantial. *Cf. Mobil Oil Corp.*, 728 F.2d at 1492.

For these reasons, it has also been determined that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to make this interim rule effective immediately.

Although the Secretary of the Treasury has determined that it is necessary to make this interim rule effective immediately, the Department is interested in obtaining input from the public on this matter. The public therefore is invited to submit written comments concerning this interim rule. Within 120 days, the Department of the Treasury will evaluate the public comments and consider other relevant factors before deciding whether to issue a final rule extending or modifying the provisions of this interim rule, or allowing the interim rule to expire without extension.

List of Subjects in 31 CFR Part 82

Administrative practice and procedure, Currency, Penalties.

Authority and Issuance

■ For the reasons set forth, Chapter 1 of Subtitle B of title 31 of the Code of Federal Regulations is amended by adding part 82 to read as follows:

PART 82—5-CENT AND ONE-CENT COIN REGULATIONS

Sec.
82.1 Prohibitions.
82.2 Exceptions.
82.3 Definitions.
82.4 Penalties.

Authority: 31 U.S.C. 5111(d).

§ 82.1 Prohibitions.

Except as specifically authorized by the Secretary of the Treasury (or designee) or as otherwise provided in this part, no person shall export, melt, or treat:

(a) Any 5-cent coin of the United States; or

(b) Any one-cent coin of the United States.

§ 82.2 Exceptions.

(a) The prohibition contained in § 82.1 against the exportation of 5-cent coins and one-cent coins of the United States shall not apply to:

(1) The exportation in any one shipment of 5-cent coins and one-cent coins having an aggregate face value of not more than $100 that are to be legitimately used as money or for numismatic purposes. Nothing in this paragraph shall be construed to authorize export for the purpose of sale or resale of coins for melting or treatment by any person.

(2) The exportation of 5-cent coins and one-cent coins having an aggregate face value amount of not more than $5 carried on an individual, or in the personal effects of an individual, departing from a place subject to the jurisdiction of the United States.

(b) The prohibition contained in § 82.1 against the treatment of 5-cent coins and one-cent coins shall not apply to the treatment of these coins for educational, amusement, novelty, jewelry, and similar purposes as long as the volumes treated and the nature of the treatment makes it clear that such treatment is not intended as a means by which to profit solely from the value of the metal content of the coins.

(c)(1) The prohibition contained in § 82.1 against exportation, melting, or treatment of 5-cent coins and one-cent coins of the United States shall not apply to coins exported, melted, or treated under a written license issued by the Secretary of the Treasury (or designee).

(2) Applications for licenses should be transmitted to the Director, United States Mint, 801 9th Street, NW., Washington, DC 20220.

§ 82.3 Definitions.

(a) ''5-cent coin of the United States'' means a 5-cent coin minted and issued by the Secretary of the Treasury pursuant to 31 U.S.C. 5112(a)(5).

(b) ''One-cent coin of the United States'' means a one-cent coin minted and issued by the Secretary of the Treasury pursuant to 31 U.S.C. 5112(a)(6).

(c) ''Export'' means to remove, send, ship, or carry, or to take any action with the intent to facilitate a person's removing, sending, shipping, or carrying, from the United States or any place subject to the jurisdiction thereof, to any place outside of the United States or to any place not subject to the jurisdiction thereof.

(d) ''Person'' means any individual, partnership, association, corporation, or other organization, but does not include an agency of the Government of the United States.

(e) ''Treat'' or ''treatment'' means to smelt, refine, or otherwise treat by heating, or by a chemical, electrical, or mechanical process.

§ 82.4 Penalties.

(a) Any person who exports, melts, or treats 5-cent coins or one-cent coins of the United States in violation of § 82.1 shall be subject to the penalties specified in 31 U.S.C. 5111(d), including a fine of not more than $10,000 and/or imprisonment of not more than 5 years.

(b) In addition to the penalties prescribed by 31 U.S.C. 5111(d), a person violating the prohibitions of this part may be subject to other penalties provided by law, including 18 U.S.C. 1001(a).

Dated: December 12, 2006.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. 06–9777 Filed 12–15–06; 12:41 pm]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Docket No. BPD GSRS 06–02]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds—Customer Confirmation Reporting Requirement Threshold Amount

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Treasury,'' ''We,'' or ''Us'') is issuing in final form an amendment to 31 CFR part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds) that raises the customer confirmation reporting requirement threshold amount from $500 million to $750 million. Beginning on December 31, 2006, any customer awarded a par amount of $750 million or more in a Treasury marketable securities auction must send us a confirmation of its awarded bid(s) by 10 a.m. on the day following the auction. This final rule also clarifies that customer confirmations may now be sent by e-mail as well as by fax or hand delivery.

DATES: *Effective Date:* January 1, 2007.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at *http://www.treasurydirect.gov* or from the Electronic Code of Federal Regulations (e-CFR) Web site at *http://www.gpoaccess.gov/ecfr.* It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director) or Chuck Andreatta (Associate Director), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504–3632 or e-mail us at *govsecreg@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: The Uniform Offering Circular (UOC), in conjunction with the announcement for each auction, provides the terms and conditions for the sale and issuance in an auction to the public of marketable Treasury bills, notes and bonds.[1] Since 1992 Treasury has required customers [2] awarded a par amount of $500 million or more in a Treasury marketable securities auction to provide a written confirmation of their awarded bids, including the name of the submitter that submitted the bids on their behalf.[3] The confirmation must also include a statement with certain information related to the customer's net long position.[4] The confirmation must be sent no later than 10 a.m. on the day following the auction. According to the UOC, the confirmation must be in writing and signed by the customer or by an authorized representative.[5] In addition, since November 2005, we have permitted customers to e-mail us their confirmations.

The customer confirmation requirement helps prevent large, false (unauthorized) customer bids from being awarded securities in an auction. On May 3, 2006, Treasury announced that it was contemplating changes to the customer confirmation requirement and cited the fact that the reporting threshold has never been changed despite changes in average auction sizes and transaction volumes.[6] On August 2, 2006, Treasury announced that, beginning on December 31, 2006, the customer confirmation reporting requirement threshold amount will be raised from $500 million or more to $750 million or more.[7] We are raising the threshold amount to reduce the regulatory burden on customers complying with this requirement, since auction offering amounts, on average, are substantially higher than they were when the requirement was first implemented.

We are also adding e-mail into the UOC as an acceptable method for customers to send confirmations. This addition supports our goal of allowing securities auction transactions to be conducted with us electronically whenever possible.

We are not making any changes to the requirement that a submitter or intermediary submitting bids for a customer notify the customer of the confirmation requirement if its auction awards are equal to or greater than the threshold. Also, no change is being made to the information that is required on the confirmation and the deadline for us to receive it.

This final rule will be effective for all marketable Treasury securities auctions occurring after December 31, 2006.

Procedural Requirements

This final rule is not a significant regulatory action for purposes of Executive Order 12866. The notice and public procedures requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 553(a)(2).

Since a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

The Office of Management and Budget previously approved the collections of information in this final amendment in accordance with the Paperwork Reduction Act under control number 1535–0112. We are not making substantive changes to these requirements that would impose additional burdens on auction bidders.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

[1] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR part 356. A final rule converting the UOC to plain language and making certain other minor changes was published in the **Federal Register** on July 28, 2004 (69 FR 45202).

[2] ''Customer'' is defined in the UOC as a bidder that directs a depository institution or dealer to submit or forward a bid for a specific amount of securities in a specific auction on the bidder's behalf. See § 356.2.

[3] Department of the Treasury, Securities and Exchange Commission and Board of Governors of the Federal Reserve System Joint Report on the Government Securities Market, pp. 7–8. (January 1992). See also § 356.24(d).

[4] See § 356.24(d)(2).

[5] If an authorized representative signs the confirmation, it must include the capacity in which the representative is acting.

[6] See Quarterly Refunding Statement by Emil W. Henry, Jr., Assistant Secretary for Financial Institutions (May 2006).

[7] See Quarterly Refunding Statement by Emil W. Henry, Jr., Assistant Secretary for Financial Institutions (August 2006).

■ For the reasons stated in the preamble, 31 CFR part 356 is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

■ 1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102 *et seq.*; 12 U.S.C. 391.

■ 2. Revise § 356.24 (d) to read as follows:

§ 356.24 Will I be notified directly of my awards and, if I am submitting bids for others, do I have to provide confirmations?

* * * * *

(d) *Customer confirmation.* Any customer awarded a par amount of $750 million or more in an auction must send us a confirmation in written form or via e-mail containing the information in paragraphs (d)(1) and (2) of this section. The confirmation must be sent no later than 10 a.m. on the day following the auction. If sent in written form, the confirmation must be signed by the customer or authorized representative. Confirmations sent by e-mail must be sent by the customer or authorized representative. Confirmations signed or sent by an authorized representative must include the capacity in which the representative is acting. A submitter or intermediary submitting or forwarding bids for a customer must notify the customer of this reporting requirement if we award the customer $750 million or more as a result of those bids. The information the customer must provide is:

(1) A confirmation of the awarded bid(s), including the name of the submitter that submitted the bid(s) on the customer's behalf, and

(2) A statement indicating whether the customer had a reportable net long position as defined in § 356.13. If a position had to be reported, the statement must provide the amount of the position and the name of the submitter that the customer requested to report the position.

Dated: December 12, 2006.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. E6–21668 Filed 12–19–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD 07–05–156]

RIN 1625–AA08

Special Local Regulation; Annual Gasparilla Marine Parade, Hillsborough Bay, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the permanent special local regulation for the Annual Gasparilla Marine Parade, Hillsborough Bay, and Tampa Bay, FL. This rule will change the date of the event from the first weekend in February to the last weekend in January. Additionally, this regulation will create a parade staging area and a 50 foot safety zone around officially entered parade boats during the parade. This action is necessary because the date on which the parade is held annually has changed. Restricting access to the parade staging area box is necessary to ensure the official parade boats are properly lined up to begin the parade. A 50 foot safety zone around officially entered parade boats is necessary to ensure the safety of the parade participants due to safety concerns caused by an increasing number of spectator vessels that gather to watch the parade.

DATES: This rule is effective January 19, 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 [CGD 07–05–156] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Dr. Tampa, Florida 33606–3598 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Ronaydee Marquez at Coast Guard Sector St. Petersburg (813) 228–2191, Ext. 8307.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 7, 2006 we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation; Annual Gasparilla Marine Parade in the **Federal Register** (71 FR 38561). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Annual Gasparilla Marine Parade is currently held annually on the first Saturday in February and is governed by a permanent regulation published at 33 CFR 100.734. The Annual Gasparilla Marine Parade has been moved permanently to the last Saturday in January. Law enforcement officials have also identified a need for a parade staging area for vessels officially entered in the parade. This area will prohibit vessels not officially entered in the parade from entering the area and allow for the lineup of official boats prior to the start of the parade. Law enforcement personnel also identified a need for a 50 foot safety zone around all official parade boats during the parade due to safety concerns associated with an increased number of spectator vessels that gather to watch this parade.

Discussion of Comments and Changes

No comments were received for this rule.

Discussion of Rule

This rule is necessary to accommodate the change in the date of the event, to create a parade staging area, and to create a 50 foot safety area around all official parade boats. This regulation will change the enforcement date from the first Saturday in February to the last Saturday in January. It will also prohibit vessels not officially entered in the parade from entering the parade staging area and prohibit vessels from entering within 50 feet of all officially entered parade boats during the parade without prior permission of Coast Guard Sector St. Petersburg.

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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The short duration of this regulation would have little, if any economic impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will effect the following entities, some of which may be small entities: The Owners or operators of vessels intending to transit or anchor in a portion of Hillsborough Bay and its tributaries north of a line drawn along latitude 27°51′18″ (Coordinates Referenced Datum: NAD 83).

The amendments to the current existing regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only 5.5 hours a year. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not 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.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. As a special local regulation issued in conjunction with a marine parade, this rule satisfies the requirements of paragraph (34)(h).

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS & REGATTAS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 100.734 to read as follows:

§ 100.734 Annual Gasparilla Marine Parade; Hillsborough Bay, Tampa, FL.

(a) *Regulated Area.* A regulated area is established consisting of all waters of Hillsborough Bay and its tributaries north of 27°51′18″ north latitude and south of the John F. Kennedy Bridge. The regulated area includes the following in their entirety: Hillsborough Cut ''D'' Channel, Seddon Channel, and the Hillsborough River south of the John F. Kennedy Bridge. All coordinates referenced use datum: NAD 83.

(b) *Special local regulations.*

(1) Entrance into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 2:30 p.m. EST on the day of the event.

(2) The regulated area is a ''no wake'' zone.

(3) All vessels within the regulated area shall stay 50 feet away from and give way to all officially entered vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels in excess of 80 feet in length without mooring arrangements made prior to the date of the event are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels in excess of 80 feet without prior mooring arrangements and not officially entered in the Gasparilla Marine Parade must use the alternate route through Sparkman Channel.

(7) Vessels not officially entered in the Gasparilla Marine Parade may not enter the Parade staging area box within the following coordinates:

27°53′53″ N 082°27′47″ W
27°53′22″ N 082°27′10″ W
27°52′36″ N 082°27′55″ W
27°53′02″ N 082°28′31″ W

(c) *Enforcement Period.* This section will be enforced from 9 a.m. until 2:30 p.m. EST, annually on the last Saturday in the month of January.

Dated: November 9, 2006.

D.W. Kunkel,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E6–21645 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD45

Dry Tortugas National Park—Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule will delete obsolete regulations; limit the area, extent and methods of recreational fishing within portions of the park's boundaries; implement a Research Natural Area (RNA); clarify the Superintendent's authority to regulate fishing, boating, and permitted activities; regulate vessel operation, anchoring and human activity; provide enhanced protection for shipwrecks consistent with State and Federal law; and restrict discharges into park waters. Definitions have also been added to clarify terminology.

DATES: *Effective Dates:* This rule is effective January 19, 2007.

FOR FURTHER INFORMATION CONTACT: Superintendent, Everglades and Dry Tortugas National Parks, 40001 SR 9336, Homestead, FL 33034. E-mail: *ever_superintendent@nps.gov* (305) 242–7710.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2006, the NPS published in the **Federal Register** proposed special regulations for Dry Tortugas National Park. (71 FR 17785). Previous regulations pertained to Fort Jefferson National Monument. The Monument was established by a presidential proclamation in 1935 for the purpose of preserving the Dry Tortugas group of islands within the original 1845 federal military reservation of islands, keys, and banks. In 1980, Congress legislatively affirmed the Fort Jefferson National Monument.

In 1992, Congress enacted Public Law 102–525 (16 U.S.C. 410xx *et seq.*) abolishing the Fort Jefferson National Monument and establishing Dry Tortugas National Park in its place. Congress established the park ''to preserve and protect for the education, inspiration and enjoyment of present and future generations nationally significant natural, historic, scenic, marine, and scientific values in South Florida.'' In addition, Congress directed the Secretary of the Interior to manage the park for the following specific purposes, including:

(1) To protect and interpret a pristine subtropical marine ecosystem, including an intact coral reef community.

(2) To protect populations of fish and wildlife, including (but not limited to) loggerhead and green sea turtles, sooty terns, frigate birds, and numerous migratory bird species.

(3) To protect the pristine natural environment of the Dry Tortugas group of islands.

(4) To protect, stabilize, restore and interpret Fort Jefferson, an outstanding example of nineteenth century masonry fortification.

(5) To preserve and protect submerged cultural resources.

(6) In a manner consistent with paragraphs (1) through (5) above to provide opportunities for scientific research. (16 U.S.C. 410xx–1(b)).

The NPS developed the Final General Management Plan Amendment/ Environmental Impact Statement (FGMPA/EIS), approved through a Record of Decision (ROD) in July 2001, to comply with its statutory mandate to manage and protect Dry Tortugas National Park, and to respond to pressures from increased visitation and over-utilization of park resources.

As described in the FGMPA/EIS, there were indications that, despite the park's remote location approximately 70 miles west of Key West, Florida, rapidly increasing visitor use was negatively impacting the resources and values that make Dry Tortugas National Park unique. Visitation to Dry Tortugas National Park increased 400 percent from 1994 through 2000, going from 23,000 to 95,000 annual visitors. The resources and infrastructure at the park could not sustain a growth rate of this magnitude while ensuring protection of park resources consistent with the park's legislative mandate.

Scientific studies documented significant declines in the size and abundance of commercially and recreationally important fish species, particularly snapper, grouper, and grunts in Dry Tortugas National Park. These declines threaten the sustainability of reef fish communities both within the park and throughout the Florida Keys. Studies demonstrate that both fish size and abundance in the Tortugas area, including Dry Tortugas National Park, are essential to spawning and recruitment for regional fish stocks and the multi-billion dollar fishing and tourism industry in the Florida Keys.

The population of South Florida is projected to increase from its current level of 6.3 million people to more than 12 million by 2050. With continued technological innovations such as global positioning systems and larger, faster vessels, the increase in population and recreational tourism will result in more pressure on the resources in the Tortugas area. In recent years, interest has grown in the commercial sector to provide increased transportation to the park and to conduct additional activities in the park, which would bring many more visitors and greater impacts to park resources.

A plan was started in 1998 to address pressures and update the 1983 Fort Jefferson National Monument General Management Plan. At that time, park managers placed a moratorium on the authorization of any new commercial activity in the park until an FGMPA/EIS could be completed and implemented that would adequately protect park resources.

The FGMPA/EIS addressed specific issues including: (1) Protection of near-pristine resources such as coral reefs and sea grasses; (2) protection of fisheries and submerged cultural resources; (3) management of commercial services; and (4) determination of appropriate levels and types of visitor use.

After extensive public involvement and collaboration with state and federal agencies, the NPS selected a management alternative that affords a high level of protection to park resources as well as providing for appropriate types and levels of high quality visitor experiences. This will be accomplished by establishing management zones and visitor carrying capacity limits for specific locations in the park, using commercial services to direct and structure visitor use, and instituting a permit system for private as well as commercial boats. A research natural area (RNA) will encompass a 46 square-mile area protecting a representative range of terrestrial and marine resources that will ensure protection of spawning fish and fish diversity and protect near-pristine habitats and processes to ensure high quality research opportunities. This rule prohibits extractive activities in the RNA, including fishing. A range of recreational and educational opportunities will be available for visitors as long as appropriate resource conditions are maintained. The quality of visitor experiences will be enhanced by maintaining the quality of resources while expanding visitor access throughout the park.

Summary of Public and Agency Involvement for the Final General Management Plan Amendment and the Proposed Rule

This rule is the culmination of an extensive general management planning

process for Dry Tortugas National Park that began in 1998. NPS planning was undertaken concurrently and collaboratively with planning by the National Oceanic and Atmospheric Administration (NOAA), the Florida Fish and Wildlife Conservation Commission (FWC), and the Gulf of Mexico Fisheries Management Council (GMFMC), leading to establishment of the Tortugas Ecological Reserve (TER) in the Florida Keys National Marine Sanctuary (FKNMS) adjoining the park.

To assist in developing alternatives for the TER, NOAA established a 25-member Working Group composed of commercial and recreational fishermen, divers, scientists, non-governmental organizations and other concerned citizens, stakeholder representatives, FKNMS Advisory Council members, and federal and state government representatives charged with resource management authority in the Tortugas area. The Working Group used an ''ecosystem approach,'' recommending alternatives based on natural resources rather than jurisdictional boundaries. The NPS and FWC participated in the Working Group that gathered ecological and socio-economic information through two public meetings, a site characterization document, and the firsthand experiences of commercial and recreational fishermen and others.

To maximize public participation in the park and the sanctuary planning, the NPS and FKNMS held 5 joint scoping meetings in the fall of 1998. To gain additional information, in 1999, the NPS and NOAA asked the National Research Council of the National Academy of Sciences to examine the utility of marine reserves and protected areas for conserving fisheries, habitats, and biological diversity. The Council's report, Marine Protected Areas: Tools for Sustaining Ocean Ecosystems, endorsed the increased use of ''no-take'' reserves, in concert with conventional management approaches, as a tool for managing ocean resources. In May 1999, the Working Group reached consensus on proposed boundaries for the TER and a proposed no-fishing zone inside Dry Tortugas National Park. All public and agency comments were considered by the NPS and incorporated into the issues and alternatives evaluated in the draft GMPA and EIS.

In June 2000, the NPS and FKNMS released their draft management plans for public review and held 6 joint public hearings with the FWC and the GMFMC. Comments on the draft GMPA were overwhelmingly supportive of establishing the RNA. Out of 6,104 comments received, 97% supported the prohibition of extractive activities in this area. All public and agency comments were carefully considered by the NPS and the proposed action was modified in several areas in response to the comments.

In January 2001, the Dry Tortugas National Park FGMPA was made available to the public. The NPS received several hundred letters from citizens and organizations reflecting a variety of viewpoints about the FGMPA. The NPS carefully considered all comments including those for and against prohibiting recreational fishing in the proposed RNA. On July 27, 2001, the Secretary of the Interior approved the FGMPA, and the Record of Decision was signed. In announcing approval of the plan, the Secretary stated, ''This plan has been developed with broad public outreach and a great deal of participation with the State of Florida, fishing organizations and interest groups. * * * My goal for this plan in the future is that recreational and commercial fishermen will see more and bigger fish, more conch and lobster in Florida Bay and the Straits of Florida, as a result of the critical spawning and marine nurseries we are protecting in the park.'' Additional details on public involvement for the FGMPA are included in the ROD which may be viewed or downloaded from the park's Web site at *http://www.nps.gov/drto/parkmgmt/index.htm.*

During the preparation of the FGMPA, the State of Florida indicated to the NPS and DOI that it claimed title to submerged lands located within Dry Tortugas National Park. These lands are also claimed by the United States. Rulemaking to implement the FGMPA was delayed pending resolution of this issue. Rather than addressing this issue through potentially protracted litigation, the State and DOI entered into a ''Management Agreement for Certain Submerged Lands in Monroe County, Florida, Located within Dry Tortugas National Park'' that was approved by the Florida Governor and Cabinet on August 9, 2005 and by the Secretary of the Interior on December 20, 2005. This rule is consistent with the requirements of that agreement which stipulates that the NPS shall submit proposed regulations to the FWC for review and obtain the concurrence of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Governor and Cabinet) regarding that portion of the regulations pertaining to the management of submerged lands within the park. The Governor and Cabinet received comments from a variety of recreational fishing organizations, conservation groups, elected officials, state and federal agencies, and interested parties prior to approving the agreement. The August 9th meeting was publicly noticed and received statewide media coverage. The management agreement may be viewed or downloaded from the park's Web site at *http://www.nps.gov/drto/parkmgmt/index.htm.* A Florida Department of Environmental Protection (FDEP) statement on the approval of the management agreement is available on its Web site at *http://www.dep.state.fl.us/secretary/news/2005/08/0809_01.htm.*

The FWC reviewed the proposed regulations at public meetings in Key Largo, Florida on December 1, 2005 and in Gainesville, Florida on February 2, 2006. The FWC received comments from a variety of recreational fishing organizations, conservation groups, elected officials, State and Federal agencies, and interested parties at these meetings. The FWC approved the proposed regulations at its February 2, 2006 meeting and described the rationale for this action on its Web site at *http://myfwc.com/whatsnew/06/statewide/tortugas.html.*

The FWC meetings were announced in advance and received statewide media coverage.

On April 5, 2006, the DOI announced publication of the NPS draft special regulations in the **Federal Register** and the initiation of a 60-day public comment period. The press release and the April 7, 2006 **Federal Register** notice invited public comments by mail, e-mail, fax, or in person at a May 17, 2006, public meeting in Key Largo, Florida. On May 11, 2006, the NPS issued a press release seeking comments at the May 17, 2006, meeting. The release was also distributed by electronic mail to more than 500 individuals and organizations on the park's mailing list. Articles announcing the meeting date, location, and how to submit comments were published in the *Miami Herald* and *Florida Keys Keynoter.* Forty-three (43) people attended the meeting. The NPS received 5,238 responses, including letters, e-mails, and verbal comments during the comment period that closed on June 6, 2006. Ninety-nine percent of the respondents supported NPS implementation of the proposed RNA.

The FWC reviewed and approved this final rule, and the NPS obtained the concurrence of the Governor and Cabinet at their November 14, 2006 meeting. This concurrence is for an initial five year period at which time their approval of the rule is again required. The Governor and Cabinet received public comments prior to taking their action. The management

agreement also provides that the NPS and the State will work together to implement a research and monitoring program for the park's marine ecosystem, to coordinate this work with similar efforts by the FKNMS, and to provide a status report on the fisheries and activities at least every five years to the Board of Trustees. To further this effort, NPS and the FWC will shortly enter into a joint agreement for cooperative research within the Park and the RNA and to establish measures for evaluating the effectiveness and performance of the RNA.

The regulations will be reviewed at least every five years, and as appropriate, revised and reissued based upon the results of the research program and information contained in the status report. Information and data collected regarding the effectiveness and performance of the RNA will also be reviewed and evaluated, and adjustments to the RNA will be undertaken, as appropriate. Any future revisions to these regulations will include opportunities for public review and comment during the rulemaking process.

Summary of Comments—Introduction

The proposed rule was published for public comment on April 7, 2006, with the comment period lasting until June 6, 2006. The NPS received 5,238 comments regarding the proposed rule, including letters, e-mails, and verbal comments given at a May 17, 2006 public meeting in Key Largo, Florida. Of the total, 63 are original comments and 5175 were form letters supporting implementation of the regulations and the RNA. These comments have been analyzed using a process called ''content analysis.'' Content analysis is a systematic process of compiling and categorizing public viewpoints and concerns. A goal of the process is to identify all relevant issues, not just those represented by the majority of respondents.

The NPS has carefully considered all comments received and in some cases adopted suggestions made. The comments and reasons for accepting or rejecting them are included below.

General Overview of Public Comments

Research Natural Area (RNA)

- Ninety-nine percent of all commenters supported NPS implementation of a RNA zone. Reasons cited were:

—To protect nationally significant corals and benthic habitats
—To protect habitats for endangered sea turtles, birds and other species
—To replenish depleted fish stocks and protect biological diversity
—To achieve park purpose to protect a pristine, intact marine ecosystem
—To allow comparative studies in a non-manipulated marine ecosystem
—Population pressure and threats to the ecosystem are increasing
—The science used in RNA decision making was sound
—The RNA will help support fishing/tourism economy of the Florida Keys
—Public involvement for the FGMPA and proposed regulations was inclusive, collaborative and adequate

- One percent of respondents opposed NPS implementation of the RNA. Reasons cited were:

—The science used in RNA decision-making was inadequate
—The resources in the Tortugas area (corals and fish stocks) are in good condition
—Commercial fishing in the Tortugas area causes far more damage to fish stocks than recreational fishing
—Commercial fishing in the Tortugas area should be banned if NPS wants to improve fish stocks
—Existing regulations, size and bag limits will adequately protect fish stocks
—The RNA will increase fishing pressure on areas remaining open to fishing
—The RNA will unnecessarily restrict public access and fishing opportunities in the park
—Public involvement for the proposed regulations was inadequate

Response to Specific Comments

Comment #1: The NPS does not have the authority and jurisdiction to issue regulations for Dry Tortugas National Park marine resources because the United States does not have jurisdiction of the submerged lands and waters beyond Duck Key.

NPS Response: The NPS disagrees. Congress established the present boundary of Dry Tortugas National Park in 1992 (Pub. L. 102–525). The NPS Organic Act (16 U.S.C. 1) authorizes the ''NPS to promote and regulate the use of the Federal area know as national parks * * * which purpose is to preserve the scenery and the natural and historic objects and the wildlife therein * * * and to leave unimpaired for the enjoyment of future generations.'' Further, 16 U.S.C. 3 authorizes the Secretary of the Interior to make and publish rules and regulations deemed necessary or proper for the use and management of the parks; and 16 U.S.C. 1a–2(h) specifically authorizes the Secretary to promulgate and enforce regulations concerning boating and other activities on or relating to waters within park boundaries. With respect to submerged lands, in August 2005, the U.S. Department of the Interior and the State of Florida entered into a management agreement acknowledging each other's claim to ownership of certain submerged lands within the park. The State and the DOI mutually agreed that the submerged lands will be managed by the NPS consistent with the authorized purpose of the park in the 2001 GMPA. Finally, NPS regulations expressly apply to waters within park boundaries subject to the jurisdiction of the United States without regard to the ownership of submerged lands.

Comment #2: The NPS should eliminate the rule that states that all fishing gear must be stowed and unavailable when traveling within the RNA zone. This is an impractical rule for most open fishing boats.

NPS Response: The regulation assures consistency with the immediately adjacent FKNMS Tortugas Ecological Reserve and maintains the integrity of the purpose of the RNA. The NPS agrees that for smaller boats with limited space that the removal of hooks and lures is impractical. The NPS therefore adopts verbatim the FKNMS's definition of ''not available for immediate use.'' The definition allows for the stowage of unbaited fishing rods in rod holders.

Comment #3: The science used in the RNA decision-making is inadequate because the methodology, assumptions, and data are flawed and the scientists who did the studies are biased and inexperienced in fishing and fish habits.

NPS Response: The NPS disagrees with these views. The original scientific studies that support the habitat protection and fisheries management recommendations for the Tortugas region are described in a detailed 1999 report entitled Site Characterization for the Dry Tortugas Region that was jointly commissioned by the NPS and the FKNMS. This report included extensive information on oceanography/water currents, coral reefs/benthic communities, as well as the fisheries essential habitats of the Tortugas region (Schmidt et al. 1999). (An extensive discussion was also included in the NPS 2001 ROD.) The specific studies of Tortugas reef fish communities and their associated benthic habitats were initially compiled in 1999 and 2000 by an inter-disciplinary team of scientists from the National Undersea Research Center (UNC), the University of Miami's Rosenstiel School of Marine and Atmospheric Sciences, the National Marine Fisheries Service (NMFS), and the Florida Wildlife Research Institute

(FWRI). This team of Federal, State, and university scientists have extensive experience in marine ecology/oceanography, fisheries management, and coral reef ecosystems based on their work throughout Florida and the Caribbean, and their site-specific studies over the last 2–3 decades in the Florida Keys and Tortugas region. The methodology and results of these scientific studies have been published in numerous scientific journals and have undergone independent scientific peer review.

The fish survey methodology (underwater direct visual fish counts) that has been used is designed specifically for assessing coral reef fish stocks (Bohnsack and Bannerot 1986). The Dry Tortugas National Park field sampling plan was devised specifically for the park (Ault et al. 2003). This methodology has undergone extensive design analysis and has been shown to be highly effective and is used around the world. The data analyses and fish stock assessments use standard statistical methods and well-accepted scientific methodologies. All of these methodologies have undergone multiple independent expert scientific reviews through publications in scientific journals. The NPS intends to continue its collaboration with NOAA, FWC, and the other federal and state agencies working in the FKNMS, and to specifically have the Dry Tortugas science program included in the planned independent scientific peer review efforts of the FKNMS Science Program.

The lead scientists who designed and conducted the Dry Tortugas National Park coral reef fishery assessment studies are PhD-level senior marine scientists from the University of Miami and the NMFS. They worked with a broad team of scientists from the FWC, the FKNMS, and many other agencies and universities. This team of scientists has many years of experience in coral reef ecology and fishery biology and have worked on fisheries projects throughout the Florida Keys and Tortugas region. The methodology and results have been presented in numerous peer reviewed scientific publications on south Florida coral reef ecology and fishery biology. Most of these scientists also live in the south Florida area and have been engaged in recreational fishing in the Florida Keys for decades. The two lead NPS marine scientists working on the Dry Tortugas National Park science programs also have advanced degrees in marine science and extensive work experience (i.e., M.S. in fishery biology, and PhD in coral reef fish ecology along with 25–30 years experience working in Florida and Caribbean marine ecosystems).

Comment #4: The science used in RNA decision-making is inadequate because the NPS does not conduct fish counts at Dry Tortugas National Park.

NPS Response: The NPS does conduct fish counts at Dry Tortugas National Park, using a combination of fishery dependent surveys (angler interviews) and fishery independent surveys (direct visual fish counts). The NPS periodically interviews anglers at the dock on Garden Key, recording catch information (called creel or fishery [angler] dependent surveys). As part of these creel surveys, the NPS asks where anglers caught their fish, the number of people involved, and the duration of their fishing activities. This information allows NPS to estimate the fishing catch per unit effort (CPUE) for a series of spatially distributed fishing zones across the park. The Dry Tortugas creel survey data collected between 1980–1984 and 2000–2004 were analyzed and compared by Ault et al. (2006) to determine any trends over time. This analysis found that gray snapper and grunt catch per unit effort (CPUE) declined between the two periods, suggesting that these species may have experienced long term decline in abundance in the park. The NPS acknowledges that the Dry Tortugas National Park creel survey is not as extensive as that in Everglades National Park because of the logistical problems of collecting such data in the Tortugas region. The NPS is addressing these limitations by designing a more effective Dry Tortugas National Park creel survey and recreational fishing guide reporting system. The NPS also has had extensive park-wide underwater visual direct counts of the important game fish species and other coral reef fishes done regularly since 1999 (including the years 1999, 2000, 2002, 2004, and 2006). This method has been analyzed by marine fisheries experts and was determined to be a more effective method of defining reef fish abundance than a creel survey. The results of these counts and other fish data are used by fisheries managers to calculate indicies to gauge the health of a fishery. One index is a spawning potential ratio (SPR) for each harvested species. The SPR is a fishery index, developed by NMFS, and is used to estimate the overall reproductive health of fish species and to estimate the impacts of overfishing. A historical study of the SPR of 35 commercially and recreationally important fish species found in the Tortugas region indicates that 13 of 16 grouper species, 7 of 13 snapper species, one wrasse, and 2 of 5 grunt species were found to be below the 30 percent SPR threshold, and are considered overfished by federal standards (Ault et al. 1998). The overall health of the Tortugas fishery as well as the health of its associated coral reefs and other benthic communities formed the primary basis of the scientific recommendation to implement the RNA within Dry Tortugas National Park.

Comment #5: The Research Natural Area is not needed because resources in the Dry Tortugas area (coral reefs, fisheries) are in good shape. Fish stocks are not overfished.

NPS Response: The NPS believes that the marine ecological resources (i.e., coral reefs and fisheries) within Dry Tortugas National Park are not ''in good shape.'' The coral reef fish stocks are well documented and are considered to be overfished based on U.S. Government standards (Ault et al. 2002, Ault et al. 2006). The most recent reef game fish stock assessment, using data collected from the park in 1999–2004, concluded that 17 of 18 grouper and snapper species are overfished, based on their spawning potential ratio (Ault et al. 2006).

The park's coral reefs, which are an essential habitat for reef game fish, have similarly experienced substantial declines in the last 30 years. The substantial decline in stony corals, highlighted by the recent listing of the major reef forming Acropora spp. as a threatened species, is one of the most ecologically significant resource stewardship challenges in the park. For example, there were 1180 acres of staghorn coral dominating reefs in the park in 1976 (Davis 1982); however, it is estimated that there are currently, at most, only a few acres of live staghorn thickets left at Dry Tortugas National Park, a greater than 99% loss. The largest acreage of staghorn loss has occurred inside the proposed RNA. The stony coral cover on Bird Key Reef has decreased by over 75% from 1975 to 2005 (W. Jaap, FWC pers. comm.; Beaver et al. 2006). From 1999 to 2004, there was a greater loss in stony coral cover in the Tortugas region than in the rest of the Florida Keys (W. Jaap, FWC pers. comm.).

When implemented, the Dry Tortugas RNA will allow NPS to better understand the linkages between recreational fishing and stock depletion, as well as fishery productivity and the coral reef environment. The combination of deep-water habitats in the TER and the shallow water habitats in the RNA should provide for long-term sustainability and productivity of the important game fish species as well as their associated coral reef

environments. This was the major justification that the FWC and the Florida Department of Environmental Protection identified when they stated their support for implementing the Dry Tortugas RNA.

Comment #6: Commercial fishing in the Tortugas area causes far more damage to fish stocks than recreational fishing and should be prohibited around DRTO, if the NPS wants to improve fish stocks.

NPS Response: Commercial fishing within Dry Tortugas National Park has been prohibited since the original Fort Jefferson National Monument was created in 1935. Since the NPS does not have jurisdiction in the rest of the Tortugas region, this is an issue that NOAA, NMFS, and FWC would need to evaluate. There have been a number of Federal and State actions to limit the impact of commercial fishing in the Tortugas region. In 2001, NOAA prohibited commercial fishing in the TER. However, the TER does not include the important shallow reef habitats critical to many reef game fishes, which would be protected by the proposed RNA. The State of Florida has also outlawed fish traps, and NOAA does not allow fish traps in the Tortugas region. NOAA began a 10-year phase out of fish traps in the Gulf of Mexico in 1997 which will prohibit the use of fish traps throughout the Gulf in 2007. Shrimp trawls are also prohibited in coral reef areas. There are several lines of evidence indicating that recreational fishing does impact fishery stocks in the Tortugas and Florida Keys. A Tortugas coral reef fish stock assessment (Ault et al. 2002) concluded that ''The Dry Tortugas National Park fishery for many reef fish stocks is in worse shape than the surrounding broader Tortugas region.'' This suggests that recreational fishing is a factor because there has been no commercial fishing in the park since 1935. NMFS has conducted stock assessments for several reef game fishes distinguishing between commercial and recreational effects of landings and bycatch mortality based on landings statistics (SEDAR 2001–2005). These assessments found that for many reef species in the Florida Keys, recreational anglers extract more fish that commercial fishers. Recreational fishing in the park for spiny lobster in the 1960's and early 1970's caused a documented depletion in lobster abundance and a 58% decline in catch rates in the park (Davis 1977, Davis and Dodrill 1980). In response, the NPS closed the park to lobster harvesting in 1974.

Finally, the NPS believes that additional protection from increased recreational fishing activities in the Tortugas region is needed because the fishery pressure is expected to greatly increase, because the south Florida population is projected to nearly double by 2050. Studies have shown that the number of registered boat owners in south Florida has grown at a very high rate over the last two decades, while commercial fishing pressures have remained relatively flat during this same period. This again suggests that increased pressure from recreational fishing is a significant factor in the sustainability of the Tortugas fishery.

Comment #7: Existing regulations and size and bag limits will adequately protect fish stocks.

NPS Response: Although current recreational fishing regulations are beneficial, they have not been sufficient to sustain this important fishery or to achieve the high standards of ecosystem protection required by the NPS Organic Act and the Dry Tortugas National Park enabling legislation. The well-documented condition of the Tortugas fishery and associated coral reef habitats indicates that additional protective actions are required. No-take marine reserves are commonly implemented for fishery and ecosystem protection and recovery, in addition to ongoing measures including bag limits, size limits, quotas, and gear restrictions. The U.S. Coral Reef Task Force (USCRTF) states that marine reserves are the most powerful tool for conservation of coral reef ecosystems (USCRTF 2002). Similarly, the National Research Council's 2000 review of marine protected areas endorsed the increased use of no-take marine reserves in concert with conventional management approaches (Marine Protected Areas, Tools For Sustaining Ocean Ecosystems. National Academy Press).

Comment #8: The no-take RNA will increase fishing pressure on areas remaining open to fishing.

NPS Response: The NPS disagrees with this assumption and believes that the focus should be more on the overall condition of reef game fish stocks and the health of the fishery in areas remaining open to recreational or commercial fishing. A growing number of scientific studies suggest that the ecological effect of implementing no-take marine reserves results in an increase in the abundance and size of target fishery species within areas adjacent to reserves, and thus helps sustain adjacent fisheries, due to a net export of these species from the reserve (also known as ''spillover effects''). A 2001 ''Scientific Consensus Statement On Marine Reserves And Marine Protected Areas'' signed by 161 marine scientists states, ''In the few studies that have examined spillover effects, the size and abundance of exploited species increase in areas adjacent to reserves.'' (National Center for Ecological Analysis and Synthesis 2001).

More recent scientific studies on coral reef fisheries have shown that marine reserves have enhanced adjacent fisheries, including greater fish biomass (i.e., more and/or larger fish), higher catch, increased catch rate, and reduced fishing effort (McClanahan and Mangi 2000, Roberts et al. 2001, Galal et al. 2002, Russ et al. 2003, Russ et al. 2004). DRTO plans to conduct similar scientific studies to assess the spillover effects of the RNA.

Even with RNA implementation, the vast majority of the Tortugas area, and 54% of the park will remain open to recreational fishing.

Comment #9: The RNA will unnecessarily restrict public access and fishing opportunities in the park.

NPS Response: The NPS disagrees. A variety of recreational and educational opportunities will be available to visitors in the RNA including boating, swimming, snorkeling, scuba diving, wildlife viewing, and scientific research. Fishing will not be allowed in the RNA in order to protect important nursery areas that will help produce greater abundance and diversity of fish. Mooring buoys will be installed to provide private and tour boat access to snorkel and dive sites while protecting corals, shipwrecks, and other sensitive resources from anchor damage. Allowing non-consumptive uses in the RNA, with careful monitoring of impacts of these activities, will provide exceptional resource appreciation and public education benefits. It will also enable the NPS to meet its statutory obligation to ''protect and interpret a pristine subtropical marine ecosystem, including an intact coral reef community.''

Fifty-four percent of park waters will remain open for recreational fishing including the natural/cultural zone (50 square miles), five of the park's seven islands, and the historic/adaptive use zone surrounding Garden Key and Fort Jefferson (4 square miles). This includes the overnight anchorage and shallows around Garden, Bush, and Long Keys where angling for permit and tarpon is popular. Visitor studies conducted by the NPS in 1995 and 2002 found that while the majority of visitors (78%) did not fish on their visit to the park, it is an important activity for those who do. The areas most heavily fished were a circular area extending 1 mile in radius outwards from Garden Key (64% of all trips) and the southwestern quarter of

the park (57%), and these areas will remain open to recreational fishing. Private boaters often fish the anchorage adjacent to Fort Jefferson and the flats surrounding the nearby keys. Fishing from the dock and shoreline of Garden Key is popular with visitors arriving by ferry or seaplane. The areas open for fishing includes 56% of the park's seagrass meadows and 28% of park waters less than 6 feet deep.

Significant large areas adjacent to the park also remain open for recreational fishing. They include the southern half of the Tortugas Banks (west of the park), the waters south and east of the park, and the popular king-fishing area northeast of the park. These areas were excluded from the FKNMS TER in order to protect fishing interests in the region.

NPS recognizes that some of the private and charter recreational fishing that formerly occurred in the RNA will relocate to other areas within and outside the park. The scientific literature and FKNMS experience with no-take zones strongly suggests that the fishing experience outside the RNA will be enhanced in the future as fish populations increase in size and number as a result of establishing zones dedicated to improving the spawning and juvenile populations. The presence of substantially larger fish should benefit trophy fishing in park waters adjacent to the RNA. These larger fish could also leave the RNA and be caught by recreational or commercial fishermen outside the park.

Comment #10: Public involvement for the proposed regulations was inadequate.

NPS Response: Public involvement in the Dry Tortugas National Park GMPA and the proposed regulations has been both extensive and inclusive as described in the background section above.

Comment #11: To better protect elkhorn coral (*Acropora palmate*) and staghorn coral (*Acropora prolifera*) patches special protection zones, the NPS should:

A: Close the 5 Foot Channel and install closure/marker buoys a sufficient distance inshore (toward the Fort) in 5 Foot Channel and on Long Key-Bird Key forereef near the entrance of 5 Foot Channel.

NPS Response: NPS agrees, and this closure will be implemented.

B: Delineate the zones with marker buoys rather than rely on boaters to determine if they are 100 yards away from the patches.

NPS Response: NPS agrees, and the zones will be appropriately marked.

C: Prohibit aircraft from taxiing, landing, or taking off within the special protection zones.

NPS Response: NPS agrees. This rule has been revised to read ''a landing or takeoff may not be made * * * within five hundred (500) feet of any closed area.'' This includes all special protection zones.

D: Include information on threatened status of elkhorn and staghorn corals in the Section by Section analysis paragraph (c).

NPS Response: NPS agrees and has modified the Section-by-Section Analysis to include this information.

Comment #12: NPS should prohibit anchoring in rubble bottom anywhere in the park because of potential negative impacts to corals, especially elkhorn and staghorn corals recently listed as threatened species under the Endangered Species Act, and to other ecological resources. Only anchoring in sand bottom should be permitted. Mooring buoys should be installed to facilitate access to coral areas without damage.

NPS Response: This rule has been revised deleting any reference to anchoring on rubble bottom. More specifically, the definition of the ''designated anchorage'' has been revised to read: ''*Designated anchorage* means any area of sand within one nautical mile of the Fort Jefferson Harbor Light.'' The rule is now consistent with the anchoring provisions applicable in the FKNMS.

NPS will make installation of mooring buoys on the Long Key-Bird Key Reef a priority. However, boats will still be able to anchor on sand bottom on the portion of this reef that is in the designated anchorage around Garden Key. NPS will provide educational material to inform boaters of anchoring locations on the reef so as to minimize the ecological effects of anchoring damage and identify reef areas to avoid. NPS will monitor and assess the ecological effects of anchoring on the Long Key-Bird Key Reef and adaptively manage visitor use to minimize ecological impacts.

Comment #13: The nurse shark mating area between Long Key and the elkhorn coral (*Acropora palmata*) patch should be a seasonally closed special protection zone.

NPS Response: Since this closure is based on a seasonal need that can vary from year-to-year, the NPS will address this closure using authority delegated to the Superintendent by NPS regulations.

Comment #14: The National Oceanic and Atmospheric Administration noted that the draft regulation and section-by-section discussion regarding discharges into park waters (paragraph (g), while similar to FKNMS regulations at 15 CFR 922.163, are inconsistent with FKNMS regulations for discharges within the Tortugas Ecological Reserve at 15 CFR 922.164(d)(1)(i). NOAA's discharge regulations for the TER only allow for the discharge of cooling water and engine exhaust. As a result, the draft NPS regulations would allow for certain types of discharges in the Research Natural Area zone that are not allowed in the adjacent TER (i.e., fish parts, bilge water, and gray water).

NPS Response: NPS appreciates the identification of this discrepancy and has revised the rule and section-by-section discussion to make discharge regulations within the Research Natural Area identical to those for the TER. The NPS intends for the RNA regulations to be consistent or ''seamless'' with FKNMS regulations for the TER as both agencies share identical resource protection goals and wish to maximize public understanding and minimize confusion regarding allowable activities in these zones.

Complete citations to publications referenced in the Response to Specific Comments section may be viewed on the park's Web site at: *http://www.nps.gov/drto/parkmgmt/index.htm*.

Changes to the Final Rule

Based on the preceding comments and responses, the NPS has made four substantive changes to the proposed rule language.

1. The definition of ''designated anchorage'' (a)(3) was modified by removing the reference to ''rubble bottom.'' The definition now reads, ''any area of sand within one nautical mile of the Fort Jefferson Harbor Light.''

2. The definition of ''not available for immediate use'' (a)(11) was modified to delete the reference to requiring the removal of hooks and lures from fishing rods. The definition now reads, '' not readily accessible for immediate use, *e.g.*, by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or being securely covered and lashed to a deck or bulkhead.''

3. (k)(2)(a). The landing and takeoff of aircraft was modified to include all closed areas within the designated landing zone (within a radius of one mile of Garden Key). The proposed regulations restricted aircraft landings and takeoffs to within 500 feet of Bush Key when that island was closed for wildlife nesting. Other sensitive areas within the vicinity have been identified as needing the 500 foot buffer from aircraft landings and takeoffs. These include the staghorn coral (*Acropora*

prolifera) and elkhorn coral (*Acropora palmata*) patches and the nurse shark mating area. The regulation has been modified to read, ''Aircraft may be landed on the waters within a radius of one (1) mile of Garden Key, but a landing or takeoff may not be made within five hundred (500) feet of any closed area.''

4. Paragraph (g), regulations for discharges into park waters, was modified to prohibit vessel discharges in the Research Natural Area, with the exception of engine cooling water and exhaust. The draft regulation would have allowed for other discharges in the RNA (*i.e.*, fish parts, bilge water, and gray water) that are inconsistent with the goal of maintaining the highest possible water quality in this zone. The revised regulation will enhance resource protection in the RNA and is consistent with NOAA discharge regulations for the adjacent Tortugas Ecological Reserve.

Section-by-Section Analysis

(a) What terms do I need to know?

In order to provide clarity and reduce possible confusion, 15 definitions have been included in this paragraph. They include: baitfish, cast net, designated anchorage, dip net, finfish, flat wake, guide fishing, live rock, lobster, marine life, not available for immediate use, ornamental tropical fish, permits, research natural area, and shrimp. Common fish names referred to in the regulations are further clarified by including scientific names.

(b) Are there recreational fishing restrictions that I need to know?

Section 2.3(a) of this chapter adopts non-conflicting state fishing laws as part of the general NPS regulations applicable to all units of the National Park System unless regulations for particular park areas specify otherwise. For Dry Tortugas National Park, additional requirements relating to fishing are included to achieve the park's purposes and implement planning decisions. Recreational fishing activities must comply with the state regulations unless those activities are otherwise restricted or prohibited in this section. Any reference to fishing in § 7.27 refers to recreational fishing, which is the taking, attempting to take, or possessing of fish for personal use. This is the same definition used by the State of Florida. All references to commercial fishing have been removed since this activity is already prohibited by 36 CFR 2.3(d)(4).

The intent of paragraph (b)(1) allows the Superintendent to impose restrictions or closures to protect fish species within the park. After consulting with and obtaining the concurrence of the FWC, the Superintendent may impose closures and establish conditions or restrictions necessary pertaining to fishing, including but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, bag and possession limits. In emergency situations, after consulting with the FWC, the Superintendent may impose temporary closures and establish conditions or restrictions for up to two thirty-day periods. In emergency situations where consultation in advance is not possible, the Superintendent will consult with the FWC within 24-hours of the initiation of closures or restrictions. This provision of such closures and restrictions is in furtherance of the park's enabling legislation, which identifies protection of fish and wildlife as a purpose of its establishment. The public will receive notice of such closures or restrictions by one or more of the methods listed in § 1.7 of this chapter.

Paragraph (b)(2) identifies which fish can be taken and the legal methods for taking these fish. Fishing is limited to fin fish caught by a closely attended hook-and-line, bait fish caught by hook-and-line, cast nets or dip nets, and shrimp caught by dip nets or cast nets. For the last 10 years, these restrictions have been enforced through the Superintendent's Compendium, which serves as a local management guide authorized by 36 CFR 1.5. The previous restriction in 36 CFR 7.27(a)(5)(i), that limits cast nets to 12 feet in diameter, has been deleted. There appears to be no compelling ecological or environmental reason to restrict the size of the cast nets. This change would make the park's regulations consistent with state regulations.

Paragraph (b)(3) identifies areas that are closed to fishing, including the RNA. Note, however, that paragraph (b)(3)(i) includes provisions that allow vessels to transit the RNA with legally harvested fish and fishing gear onboard. The provisions of paragraph (b)(3) are consistent with the regulations applicable to the adjacent TER within the FKNMS (15 CFR 922.164; Florida Administrative Code 68B–6.003). The other closed areas are the waters inside the Garden Key moat that surrounds Fort Jefferson and those within the designated swimming and snorkeling area. Fishing in these areas has been found to be incompatible with the identified visitor activities of boating, swimming and snorkeling, and for safety reasons in the helicopter-landing zone.

Paragraph (b)(4) identifies specific prohibitions on fishing within the park. This paragraph lists certain fishing practices that differ from those allowed under State of Florida regulations because these practices are incompatible with the goals and management direction of the park.

Paragraph (b)(4)(i) provides for complete protection of lobster within the park. All existing regulations found in 36 CFR 7.27(a)(2) related to recreational fishing catch limits for lobster, have been deleted. Prohibiting individuals from being in the water when they have lobster onboard their vessel will further enhance the protection of park resources. This ''prima facie'' (at first view) evidence of violation is similar to the state of Florida regulations for the Biscayne Bay/Card Sound Spiny Lobster Sanctuary (FAC 68B–11.004), and for John Pennecamp Coral Reef State Park (FAC 68B–24.005). In Dry Tortugas National Park, the harvesting of lobster has been previously prohibited through the use of the Superintendent's authority to regulate public use under 36 CFR 1.5. This prohibition was based on data collected by NPS biologists in a 1975 study, which indicated that legal harvesting was removing almost 90% of the lobster within the park. The Gulf of Mexico Fisheries Management Council concurred with this finding and recommended that the park be established as a sanctuary for lobster to assist in maintaining a population for dispersal to areas outside the park.

The proposed regulations in paragraph (b)(4)(ii), concerning possession and use of spearguns and other weapons are similar to regulations for the ecological reserves and sanctuary preservation areas found within the FKNMS (15 CFR 922.164). The State of Florida has similar regulations restricting spearfishing activities found in FS 370.172. This proposed regulation expands on the current regulation, 36 CFR 7.27(a)(7), to include guns, bows and other similarly powered weapons. Paragraph (b)(4)(iii) recognizes that a gaff is a common fishing device used to retrieve legally taken fish from the water, while identifying other prohibited fishing devices.

Although all natural resources within a national park area are protected from removal, disturbance, injury, or destruction by the general regulations found at 36 CFR 2.1, the provision at paragraph (b)(4)(iv) clarifies that ornamental tropical fish as well as all other forms of marine life within Dry Tortugas National Park are specifically

protected. This additional level of protection will help achieve the congressional direction to protect a pristine subtropical marine ecosystem, including an intact coral reef community.

The intent of (b)(4)(v) is to protect coral and other submerged resources from damage or injury by prohibiting the dragging or trawling of nets that are otherwise allowed to be used in the park.

Paragraph (b)(4)(vi) prohibits the use of nets, other than dip or cast nets. The State of Florida general recreational fishing regulations allow other nets (bully nets, frame and push nets, beach or haul seines) which are inappropriate and harmful to various submerged resources in the park.

Current regulations pertaining to sea turtles and conch found in 36 CFR 7.27(a)(1) and (3) have been deleted as unnecessary. The State of Florida has prohibited the taking of conch since 1985 and the general NPS regulations already adopt all non-conflicting state laws. Because all sea turtles are currently listed as endangered or threatened species under the Endangered Species Act (16 U.S.C. 1538), it is unnecessary to duplicate prohibitions on their taking in these regulations.

Consistent with 36 CFR 5.3, paragraph (b)(4)(vii) requires that all fee-for-service guides (including guides for fishing and diving) obtain a permit or other NPS approved commercial use authorization. This permit system allows the park to better manage the fisheries and other park resources. The Superintendent may limit the number of permitted guides within the park in order to conserve park resources and enhance the visitor experience.

(c) Are there any areas of the park closed to the public?

Yes. Paragraph (c) identifies areas that will be closed to public access. The Long/Bush Keys coral patch has been identified by biologists as ''fused'' staghorn (*Acropora prolifera*), a very rare hybrid of staghorn and elkhorn corals. This coral patch is threatened by a disease that is devastating staghorn and elkhorn coral in Biscayne National Park and the FKNMS. The elkhorn coral (*Acropora palmata*) patch also located in this area is the only remaining community of elkhorn coral found in the park. Elkhorn coral assemblages were once very abundant in the park, occupying about 440,000 square meters in 1881. Today this only known remaining elkhorn stand covers only a few hundred square meters. The NMFS has recently designated elkhorn and staghorn coral as ''threatened species'' under the Endangered Species Act. (May 9, 2006, 71 FR 26852).

Hospital and Long Keys have been closed for the last 10 years pursuant to the Superintendent's compendium authority under 36 CFR 1.5. The largest remaining breeding colony of Magnificent Frigate birds in the United States lives on Long Key. The threatened Masked Booby and other sea birds live and breed on Hospital Key. Seasonal closures of Bush Key, East Key and portions of Loggerhead Key for turtle and bird nesting may continue to be designated through the Superintendent's compendium pursuant to 36 CFR 1.5, 1.7.

(d) Is Loggerhead Key open to the public?

Loggerhead Key will be open to the public subject to closures in certain areas and restrictions on certain activities. Loggerhead Key is the largest key in the park and contains an operating 150-foot lighthouse and other structures. Most of the island falls within the RNA; however, the center portion, containing the lighthouse and the other structures, falls within a historic preservation/adaptive use zone. Paragraph (d) is consistent with the FGMPA ROD provision to manage access and recreational activities on Loggerhead Key. To protect the natural and cultural resources of the island, as well as providing appropriate visitor experiences, the Superintendent may impose terms and conditions on activities as necessary. The public will be notified of any such requirements through one or more of the methods listed in § 1.7 of this chapter. Such terms and conditions include, but are not limited to: docking, hiking restrictions, beach and swimming access, and other restrictions or closures necessary to conserve the natural and cultural resources of the island.

(e) Are there restrictions that apply to anchoring a vessel in the park?

Paragraph (e) addresses anchoring locations in general and anchoring prohibitions in the RNA. In the past, boaters have commonly anchored in sea grass beds and rubble bottom, which has resulted in unacceptable impacts to park resources. By restricting anchoring to authorized locations and prohibiting anchoring in all other areas, except in emergencies, degradation to coral reefs and seagrass meadows will be significantly reduced. Paragraph (e)(2) requires vessels to use mooring buoys in the RNA. The RNA requires a higher level of protection for the marine ecosystem; thus the use of anchors in this area is prohibited.

Paragraph (e)(3) specifies where vessels can anchor. The ''designated anchorage'' identified in the existing 36 CFR 7.27(b) is also revised to reflect the GMPA's management zone which calls for limiting anchorage of vessels from sunset to sunrise to the historic preservation/adaptive use zone around Garden Key. This ''designated anchorage'' is any sand bottom within one nautical mile of the Fort Jefferson Harbor Light.

Paragraph (e)(4) imposes restrictions on anchoring by commercial fishing and shrimping vessels consistent with U.S. Coast Guard regulations found in 33 CFR 110.190.

(f) What vessel operations are prohibited?

This paragraph addresses several issues of unsafe or otherwise prohibited vessel operations. The Fort Jefferson moat is closed to vessels to preserve and protect the historic scene and prevent damage to the structures. Vessel use in the moat could damage the walls of the fort and the integrity of the moat wall. Because of the large volume of vessel traffic in and around the Garden Key and Bird Key harbors, vessels are required to operate at a flat wake speed to prevent injury and damage resulting from boat wakes.

(g) What are the regulations regarding the discharge of materials in park waters?

Paragraph (g) provides additional protection for water quality within the park by generally prohibiting the discharge or deposit of any material or substance in park waters. The NPS wishes to maintain the highest possible water quality, free of bacterial and chemical contamination, for health and safety reasons as well as to maintain the park's environment. Paragraph (g)(1)(i) prohibits the discharge of any materials or other matter within the Research Natural Area with the only exception being for cooling water or engine exhaust. This regulation is identical to NOAA discharge regulations for the adjacent Tortugas Ecological Reserve at 15 CFR 922.164(d)(1)(i).

Paragraph (g)(1)(ii) allows for limited discharges from vessels, (gray water, deck wash water, cooling water, engine exhaust and oil-free bilge water), and some natural substances (fish parts) in park waters outside the Research Natural Area. The NPS recognizes that these discharges would have minimal impact on water quality and are consistent with the recreational fishing and anchoring activities authorized in

these zones. These regulations are similar to NOAA discharge regulations for the FKNMS at 15 CFR 922.163.

To address future issues regarding the discharge of materials or substances in park waters, paragraph (g)(2) authorizes the Superintendent to impose further restrictions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7 of this chapter.

(h) What are the permit requirements in the park?

Paragraph (h) requires that individuals obtain a permit to take part in any recreational activity occurring from a vessel within park boundaries. Permits may be issued in writing or be provided by oral (radio or telephone) authorization. Permitted activities may include snorkeling, diving, wildlife viewing, photography, and the use of mooring buoys. In the RNA, no permits will be issued for anchoring or fishing, both of which are expressly prohibited in this zone. However, a permit is not required for vessels merely transiting the park without stopping to engage in research or recreational activities. All research conducted in the park requires a permit. In the RNA, permits will only be issued for non-manipulative research (i.e., that which does not alter the existing condition).

(i) How are coral and other underwater features protected in the park?

The coral formations within the park are internationally recognized as unique and significant. Public Law 102–525 requires protection of the ''pristine subtropical marine ecosystems, including an intact coral reef community.'' Accordingly, this rule provides new provisions for the protection of corals. Significant damage to coral can be caused by divers or snorkelers handling or standing on coral, especially in areas of heavy use. In this rule, the NPS hopes to better protect the resources by specifically prohibiting these actions, thereby resulting in persons being responsible for any damage that occurs to coral through contact with their body or their equipment, such as fins, SCUBA tanks, gauges, or cameras. Language is also included to prohibit taking or removing corals and live rock. Coral damage caused by vessels is often attributed to carelessness of vessel operators but can be avoided through more careful vessel operation. This rule makes vessel operators responsible for preventing damage to corals by their vessels. These last two provisions are similar to regulations in the adjacent FKNMS (15 CFR 922.163).

Paragraph (i)(3) makes vessel operators responsible for any damage to coral, seagrass or any other underwater feature caused by their anchors or anchor parts. This is to prevent damage to fragile resources and assure the highest level of resource protection.

(j) What restrictions do I need to know when on or near shipwrecks found in the park?

Paragraph (j) provides specific protection for wrecked or abandoned craft and their cargo. Dry Tortugas National Park possesses one of the greatest concentrations of historically significant shipwrecks in North America, with some dating back to the 1600's. Within the park boundary, there have been more than 275 documented maritime casualties (shipwrecks, groundings, strandings), and human activity has left a significant historical record. Protection of submerged cultural resources is a park priority, as well as a management purpose identified in Public Law 102–525. Consistent with the park's statutory mandate, this rule will provide specific protection for these cultural resources in addition to protections provided by applicable law.

(k) Can aircraft land in the park?

Paragraph (k) requires the Superintendent to manage aircraft operations by requiring users to obtain a permit to land seaplanes in the park. Seaplanes provide transportation for a significant number of park visitors. The NPS's general regulation at 36 CFR 2.17 authorizes the Superintendent to designate, through a special regulation, operating/landing locations within the park. It also prohibits aircraft from operating under power within 500 feet of swimming beaches, boat docks, or piers unless designated through a special regulation. In order to reach the designated ramp for discharging passengers, seaplanes must taxi within 500 feet of dock areas. This paragraph specifies that a landing or takeoff may not be made within 500 feet of Garden Key or 500 feet of any area designated as closed (e.g., Bush Key when it is closed for wildlife nesting), but taxiing is allowed when seaplane use is permitted. The existing regulations use a 300 yard limit for approaches, landings and takeoffs. The new limit of 500 feet will also bring these regulations in line with the general aircraft regulations provision of 500 feet.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget has determined that this document is a significant rule and has reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The NPS has completed the report ''Cost-Benefit Analysis: Proposed Regulations Implementing the Final General Management Plan Amendment/ Environmental Impact Statement for Dry Tortugas National Park.'' (August 15, 2005) This document may be viewed on the park's Web site at: *http://www.nps.gov/drto/parkmgmt/index.htm.*

This conclusion is based on the fact that the proposed regulations would not impose significant impacts on any business. The regulations are based on the FGMPA/EIS or are restatements, clarifications, and definitions of previously established policies and regulations resulting in no change or effects on the economy.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This rule is an agency specific rule.

(3) This rule will not materially affect budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) OMB has determined that this rule raises novel legal or policy issues and OMB has reviewed the rule under Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled ''Regulatory Flexibility Threshold Analysis: Proposed Regulations Implementing the Final General Management Plan Amendment/Environmental Impact Statement for Dry Tortugas National Park.'' (January 27, 2005). This document may be viewed on the park's

Web site at: *http://www.nps.gov/drto/parkmgmt/index.htm.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only applies to the use of NPS administered lands and waters.

Both the State of Florida and the United States claim title to submerged lands located within the boundaries of the park established by Congress. Rather than addressing this issue through potentially protracted litigation, the State and the Department have entered into the ''Management Agreement for Certain Submerged Lands in Monroe County, Florida, Located within Dry Tortugas National Park'' approved by the Florida Governor and Cabinet on August 9, 2005 and by the Secretary of the Interior on December 20, 2005. This document may be viewed on the park's Web site at *http://www.nps.gov/drto/parkmgmt/index.htm.*

This rule is consistent with the requirements of the management agreement. Once final, the regulations will be reviewed by the NPS at least every five years, and as appropriate, revised, and reissued, based upon the results of the research program conducted pursuant to the management agreement as well as the information contained in the management plan status report prepared by the NPS detailing the status and activities of the implementation of the FGMPA/EIS. Information and data collected regarding the effectiveness and performance of the RNA will also be reviewed and evaluated. Under adaptive management, NPS may consider changes in the RNA, including boundary adjustments and modifications to the protection and conservation management strategies applicable to the RNA.

Consistent with the management agreement, the NPS has obtained the concurrence of the Board of Trustees of the Internal Improvement Trust Fund regarding that portion of the regulations pertaining to the management of submerged lands within the park. Further, the NPS will submit for review to the FWC any proposed revisions or amendments thereto.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

The Department of the Interior, National Park Service prepared a Final General Management Plan Amendment/Environmental Impact Statement (FGMPA/EIS) for Dry Tortugas National Park, Monroe County, Florida. Five alternatives were evaluated for guiding the management of the park over the next 15 to 20 years. The alternatives incorporate various zoning applications and other management provisions to ensure resource protection and quality visitor experience conditions. The environmental consequences anticipated from implementation of each alternative are addressed in the FGMPA/EIS. Impacts to natural and cultural resources, visitor experience, socioeconomic environment, and park operations/facilities are analyzed. The FGMPA/EIS was prepared in conjunction with planning by the FKNMS, the FWC, and the GMFMC to establish the TER in state and federal waters adjacent to Dry Tortugas National Park. State and Federal approvals for the TER are complete and implementation of the ecological reserve is underway.

After careful consideration of legislative mandates, visitation trends, environmental impacts, relevant scientific studies, and comments from the public and agencies, the NPS chose to implement Alternative C as described in the Final GMPA/EIS issued in January 2001 (with some minor clarifications, as listed in Appendix A, Errata). This alternative best accomplishes the legislated purposes of DRTO and the statutory mission of the NPS to provide long-term protection of park resources and values while allowing for visitor use and enjoyment. It also furthers the objectives of Executive Order 13089, Coral Reef Protection.

The goal of the selected action is to afford a high level of protection to park resources and provide for appropriate types and levels of high quality visitor experiences. This will be accomplished through management zoning, establishing visitor carrying capacity for specific locations in the park, using commercial services to direct and structure visitor use, and instituting a permit system for private boaters. A wide range of recreational and educational opportunities will be available to visitors provided that appropriate resource conditions are maintained. Visitor experiences will be enhanced due to expanded access throughout the park and higher quality resources to enjoy.

Multiple consultations took place with government agencies during the EIS process, including the FKNMS, the FWC, and the GMFMC. The NPS Southeast Regional Director signed the Record of Decision (ROD) on July 27, 2001. In reaching a decision, NPS carefully considered the comments and concerns expressed by the public throughout the EIS process. The EIS and ROD are available online at: *http://www.nps.gov/drto/parkmgmt/index.htm.* or at Everglades National Park, as indicated above under the heading **FOR FURTHER INFORMATION CONTACT**.

Pursuant to section 7 of the Endangered Species Act, the NPS has consulted with the U.S. Fish and Wildlife Service (FWS) and the National

Marine Fisheries Service (NMFS) regarding potential effects of the proposed regulations on federally listed species. On December 15, 2005, the FWS determined that the proposed rule would have no effect on the Bald eagle and would not likely adversely affect nesting marine turtles, the American crocodile, West Indian manatee or the Roseate tern.

On June 7, 2006, the NMFS issued a Biological Opinion on the proposed rule. NMFS determined that the continuation of hook and line fishing in the park may result in the lethal take of one sea turtle annually. NMFS concluded that this level of take is not likely to jeopardize the continued existence of green, hawksbill, leatherback, or loggerhead sea turtles. The Biological Opinion authorizes lethal take of one sea turtle per year and determined that the following Reasonable and Prudent Measures (RPM) are necessary and appropriate to minimize impacts of incidental take of sea turtles.

1. NPS must ensure that the Dry Tortugas National Park Sea Turtle Monitoring Program is maintained and capable of both detecting any adverse effects resulting from recreational fishing inside the park and assessing the actual level of incidental take in comparison with the anticipated incidental take documented in this opinion.

2. NPS must implement outreach programs seeking to increase awareness among park anglers and visitors of protected species within the park and ways to reduce encounters with those species.

3. NPS must provide NMFS' Southeast Regional Office of Protected Resources Division (F/SER3) with sufficient information to monitor this Incidental Take Statement.

To be exempt from liability for take prohibited by section 9 of the ESA, NPS must comply with the following terms and conditions, which implement the RPMs described above. These terms and conditions are non-discretionary.

To implement RPM No. 1:

1. NPS must increase its sea turtle stranding surveillance to at least twice weekly. This surveillance should be split equally between shore and in water surveys when feasible.

2. NPS must establish a reporting system that requires anglers or charter boat guides to report interactions between their fishing party and sea turtles.

To implement RPM No. 2:

3. NPS must develop and implement an outreach program to educate recreational fishers on sea turtle handling protocols, emphasizing release procedures that minimize stress and maximize survival potential.

4. NPS must supply recreational fishers with verbal and/or written information on fishing gear that can reduce sea turtle bycatch (*i.e.*, circle hooks).

To implement RPM No. 3:

5. NPS must notify F/SER3 immediately if they believe a sea turtle stranding is related in any way to fishing activities within the park.

6. NPS shall monitor sea turtle strandings to ensure incidental take levels do not exceed the authorized level. If at any time, the take level stated in this opinion is exceeded, NPS must notify F/SER3 immediately. Stranding reports shall be submitted to F/SER3 annually. Submitted reports must include any information on the causes of strandings, with special attention paid to any fishing gear associated with the animal.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

List of Subjects in 36 CFR Part 7

National parks, Recreation.

■ For reasons stated in the preamble, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

■ 2. Section 7.27 is revised as follows:

§ 7.27 Dry Tortugas National Park.

(a) What terms do I need to know? The following definitions apply to this section only:

(1) *Bait fish* means any of the following:

(i) Ballyhoo (family *Exocioetidae* and genus *Hemiramphus*), other genus may be included in this family;

(ii) Minnow (families *Cyprinodontidae, Peciliidae*, or *Aherinidae*);

(iii) Mojarra (family *Gerreidae*);

(iv) Mullet (family *Mugilidae*);

(v) Pilchard (family *Clupeidae*); or

(vi) Pinfish (family *Sparidae*, genus *Lagodon*).

(2) *Cast net* means a type of circular falling net, weighted on its periphery, which is thrown and retrieved by hand, measuring 14 feet or less stretched length (stretched length is defined as the distance from the horn at the center of the net with the net gathered and pulled taut, to the lead line).

(3) *Designated anchorage* means any area of sand within one nautical mile of the Fort Jefferson Harbor Light.

(4) *Dip net* means a hand held device for obtaining bait, the netting of which is fastened in a frame. A dip net may not exceed 3 feet at its widest point.

(5) *Finfish* means a member of subclasses Agnatha, Chondrichthyes, or Osteichthyes.

(6) *Flat wake speed* means the minimum required speed to leave a flat wave disturbance close astern a moving vessel yet maintain steerageway, but in no case in excess of 5 statute miles per hour.

(7) *Guide operations* means the activity of a person, partnership, firm, corporation, or other entity to provide services for hire to visitors of the park. This includes, but is not limited to, fishing, diving, snorkeling, and wildlife viewing.

(8) *Live rock* means any living marine organism or assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells.

(9) *Lobster* means any of the following:

(i) Shovelnosed or Spanish Lobster (*Scyllarides aequinocti*);

(ii) Slipper lobster (*Parribacus antarcticus*);

(iii) Caribbean spiny lobster (*Panulirus argus*); or

(iv) Spotted spiny lobster (*Panulirus guttatus*).

(10) *Marine life* means:

(i) Sponges, sea anenomes, corals, jellyfish, sea cucumbers, starfish, sea urchins, octopus, crabs, shrimp, barnacles, worms, conch; and

(ii) Other animals belonging to the Phyla Porifera, Cnidaria, Echinodermata, Mollusca, Bryozoa, Brachiopoda, Arthropoda, Platyhilmenthes, and Annelida.

(11) *Not available for immediate use* means not readily accessible for immediate use (*e.g.*, by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or being securely covered and lashed to a deck or bulkhead).

(12) *Ornamental tropical fish* means a brightly colored fish, often used for aquarium purposes and which lives in

close relationship to coral communities, belonging to the families Syngathidae, Apogonidae, Pomacentridae, Scaridae, Blennidae, Callionymidae, Gobiidae, Ostraciidae, or Diodontidae.

(13) *Permit*, in the case of 36 CFR part 7.27, means an authorization in writing or orally (e.g., via radio or telephonically).

(14) *Research Natural Area* (RNA) at Dry Tortugas National Park means the 46-square-statute-mile area in the northwest portion of the park enclosed by connecting with straight lines the adjacent points of 82°51′ W and 24°36′ N, and 82°58′ W and 24°36′ N west to the park boundary, but excluding:

(i) The designated anchorage;

(ii) Garden Key, Bush Key and Long Key; or

(iii) The central portion of Loggerhead key including the lighthouse and associated buildings.

(15) *Shrimp* means a member of the genus *Farfantepenaeus*, Penaeus sp.

(b) Are there recreational fishing restrictions that I need to know?

(1) Yes. After consulting with and obtaining the concurrence of the Florida Fish and Wildlife Conservation Commission, based on management objectives and the park fisheries research, the Superintendent may impose closures and establish conditions or restrictions necessary pertaining to fishing, including, but not limited to, species of fish that may be taken, seasons, and hours during which fishing may take place, methods of taking, and size, bag, and possession limits. The public will be notified of any changes through one or more methods listed in § 1.7 of this chapter. In emergency situations, after consulting with the Florida Fish and Wildlife Conservation Commission, the Superintendent may impose temporary closures and establish conditions or restrictions necessary, but not exceeding 30 days in duration which may be extended for one additional 30 day period, pertaining to fishing, including, but not limited to, species of fish that may be taken, seasons, and hours during which fishing may take place, methods of taking, and size, bag, and possession limits. In emergency situations where consultation in advance is not possible, the Superintendent will consult with the Florida Fish and Wildlife Conservation Commission within 24-hours of the initiation of the temporary closure or restriction.

(2) Only the following may be legally taken from Dry Tortugas National Park:

(i) Fin fish by closely attended hook-and-line;

(ii) Bait fish by closely attended hook and line, dip net, or cast net and limited to 5 gallons per vessel per day; and

(iii) Shrimp may be taken by dip net or cast net.

(3) The following waters and areas are closed to fishing:

(i) The Research Natural Area (RNA): Fish and fishing gear may be possessed aboard a vessel in the RNA, provided such fish can be shown not to have been harvested from within, removed from, or taken within the RNA, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through the RNA, provided further that such vessel is in continuous transit through the RNA. Gear capable of harvesting fish may be aboard a vessel in the RNA, provided such gear is not available for immediate use when entering and during transit through the RNA and no presumption of fishing activity shall be drawn therefrom;

(ii) Garden Key moat;

(iii) Within any swimming and snorkeling areas designated by buoys;

(iv) Within 50 feet of the historic coaling docks;

(v) Helipad areas, including the gasoline refueling dock.

(4) The following are prohibited:

(i) Possessing lobster within the boundaries of the park, unless the individual took the lobster outside park waters and has the proper State/Federal licenses and permits. Vessels with legally taken lobster aboard which was taken outside the park may not have persons overboard in park waters. The presence of lobster aboard a vessel in park waters, while one or more persons from such vessel are overboard, constitutes prima facie evidence that the lobsters were harvested from park waters in violation of this chapter.

(ii) Taking fish by pole spear, Hawaiian sling, rubber powered, pneumatic, or spring loaded gun or similar device known as a speargun, air rifles, bows and arrows, powerheads, or explosive powered guns. Operators of vessels within the park must break down and store all weapons described in this paragraph so that they are not available for immediate use.

(iii) Use of a hand held hook, gig, gaff, or snare, except that a gaff may be used for landing a fish lawfully caught by hook and line when consistent with all requirements in this section, including size and species restrictions.

(iv) Taking, possessing, or touching any ornamental tropical fish or marine life except as expressly provided in this section.

(v) Dragging or trawling a dip net or cast net.

(vi) The use of nets except as provided in paragraphs (b)(3)(ii)and (iii) of this section.

(vii) Engaging in guide operations (fee for service), including but not limited to fishing and diving, except in accordance with the provisions of:

(A) A permit, contract, or other commercial use authorization; or

(B) Other written agreement with the United States administered under this chapter.

(c) *Are any areas of the park closed to the public?* Yes. The following areas are closed to the public:

(1) The elkhorn (*Acropora palmata*) and staghorn (*Acropora prolifera*) coral patches adjacent to and including the tidal channel southeast of Long and Bush Keys and extending to 100 yards from the exterior edge of either patch;

(2) Hospital and Long Keys; and

(3) Areas that the Superintendent designates in accordance with § 1.5 and noticed to the public through one or more of the methods listed in § 1.7 of this chapter.

(d) *What restrictions apply on Loggerhead Key?*

(1) The Superintendent will, as necessary to protect park resources, visitors, or employees:

(i) Designate areas on Loggerhead Key open for public use;

(ii) Establish closures or restrictions on and around the waters of Loggerhead Key; and

(iii) Establish conditions for docking, swimming or wading, and hiking.

(2) The Superintendent will notify the public of designations, closures or restrictions through one or more of the methods listed in § 1.7 of this chapter.

(e) *What restrictions apply to anchoring a vessel in the park?*

(1) Anchoring in the Research Natural Area (RNA) is prohibited.

(2) All vessels in the RNA must use designated mooring buoys.

(3) Anchoring between sunset and sunrise is limited to the designated anchorage area at Garden Key.

(4) Vessels engaged in commercial fishing or shrimping must not anchor in any of the channels, harbors, or lagoons in the vicinity of Garden Key, Bush Key, or the surrounding shoals outside of Bird Key Harbor, except in cases of emergency involving danger to life or property. (Emergencies may include, adverse weather conditions, mechanical failure, medical emergencies, or other public safety situations.)

(f) *What vessel operations are prohibited?* The following vessel operations are prohibited:

(1) Operating a vessel in the Fort Jefferson Moat; and

(2) Operating a vessel above a flat wake speed in the Garden Key and Bird Key Harbor areas.

(g) *What restrictions apply to discharging materials in park waters?*

(1) Discharging or depositing materials or substances of any kind within the boundaries of the park is prohibited, except for the following:

(i) *Research Natural Area:* cooling water or engine exhaust.

(ii) *Park Waters Outside the Research Natural Area:*

(A) Fish, fish parts, chumming materials, or bait used or produced incidental to and while conducting recreational fishing activities in the park;

(B) Water generated by routine vessel operations (e.g., deck wash down and graywater from sinks, consisting of only water and food particles;

(C) Vessel cooling water, engine exhaust, or bilge water not contaminated by oil or other substances.

(2) The Superintendent may impose further restrictions as necessary to protect park resources, visitors, or employees. The Superintendent will notify the public of these requirements through one or more of the methods listed in § 1.7 of this chapter.

(h) *What are the permit requirements in the park?*

(1) A permit, issued by the Superintendent, is required for all non-commercial vessels for which occupants are engaged in recreational activities, including all activities in the RNA. Permitted recreational activities include but are not limited to use of mooring buoys, snorkeling, diving, wildlife viewing, and photography.

(2) A permit, issued by the Superintendent, is required for a person, group, institution, or organization conducting research activities in the park.

(3) Vessels transiting the park without interruption shall not require a permit.

(i) *How are corals and other underwater natural features protected in the park?*

(1) Taking, possessing, removing, damaging, touching, handling, harvesting, disturbing, standing on, or otherwise injuring coral, coral formation, seagrass or other living or dead organisms, including marine invertebrates, live rock, and shells, is prohibited.

(2) Vessel operators are prohibited from allowing their vessel to strike, injure, or damage coral, seagrass, or any other immobile organism attached to the seabed.

(3) Vessel operators are prohibited from allowing an anchor, chain, rope or other mooring device to be cast, dragged, or placed so as to strike, break, abrade, or otherwise cause damage to coral formations, sea grass, or submerged cultural resources.

(j) *What restrictions apply on or near shipwrecks?*

(1) No person may destroy, molest, remove, deface, displace, or tamper with wrecked or abandoned vessels of any type or condition, or any cargo pertaining thereto.

(2) Surveying, inventorying, dismantling, or recovering any wreck or cargo within the boundaries of the park is prohibited unless permitted in writing by the Superintendent.

(k) *How are aircraft operations restricted?*

(1) Landing an aircraft in Dry Tortugas National Park may occur only in accordance with a permit issued by the Superintendent under § 1.6 of this chapter.

(2) When landing is authorized by permit, the following requirements also apply:

(i) Aircraft may be landed on the waters within a radius of 1 mile of Garden Key, but a landing or takeoff may not be made within 500 feet of Garden Key, or within 500 feet of any closed area.

(ii) Operation of aircraft is subject to § 2.17 of this chapter, except that seaplanes may be taxied closer than 500 feet to the Garden Dock while en route to or from the designated ramp, north of the dock.

(iii) Seaplanes may be moored or brought up on land only on the designated beach, north of the Garden Key dock.

Dated: October 2, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–21646 Filed 12–19–06; 8:45 am]

BILLING CODE 4312–78–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

[NARA–06–0005]

RIN 3095–AB55

Use of NARA Facilities

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This final rule revises NARA's policy on the inspection of personal property in the possession of a contractor, employee, student intern, visitor, volunteer or other person on NARA properties. Because NARA's current regulations apply specifically only to visitors on NARA property, the final rule clarifies that all persons arriving on, working at, visiting, or departing from NARA property are subject to the inspection of their personal property. The final rule also amends NARA's current regulations to include additional properties under NARA control. This rule will affect members of the public, members of Federal agencies, NARA employees, NARA contract-employees and NARA volunteers.

DATES: *Effective Date:* Effective January 19, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey Landou at 301–837–1899 or fax number 301–837–0293.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the September 26, 2006, **Federal Register** (71 FR 56919) for a 60-day comment period. Notification of user groups occurred following publication of the proposed rule. NARA received no comments on the proposed rule and therefore is issuing the final rule with no changes.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because the final rule affects NARA contractors, employees, student interns, visitors, volunteers and other persons on NARA controlled property. This regulation does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1280

Archives and records.

■ For the reasons set forth in the preamble, NARA amends part 1280 of title 36, Code of Federal Regulations as follows:

PART 1280—USE OF NARA FACILITIES

■ 1. The authority citation for part 1280 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Revise the heading for part 1280 to read as set forth above:

■ 3. Amend § 1280.2 to add paragraphs (d), (e), and (f) to read as follows:

§ 1280.2 What property is under the control of the Archivist of the United States?

* * * * *

(d) *The National Archives Southwest Region.* The National Archives Southeast Region in Morrow, Georgia as specified in 36 CFR 1253.7 (e).

(e) *The Federal Records Centers.* The Federal Records Centers in Ellenwood, Georgia, and Riverside, California, as specified in 36 CFR 1253.6 (d) and (l), respectively.

(f) *Additional Facilities.* As other properties come under the control of the Archivist of the United States, they will be listed in these regulations as soon as practicable.

§§ 1280.4, 1280.6 and 1280.8 [Redesignated as §§ 1280.6, 1280.8 and 1280.4]

■ 4. In Subpart A, redesignate §§ 1280.4, 1280.6 and 1280.8 as §§ 1280.6, 1280.8 and 1280.4, respectively.

■ 5. Revise newly designated § 1280.4 to read as follows:

§ 1280.4 What items are subject to inspection by NARA?

NARA may, at its discretion, inspect the personal property in the possession of any NARA contractor, employee, student intern, visitor, volunteer, or other person arriving on, working at, visiting, or departing from NARA property.

Dated: December 13, 2006.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E6–21682 Filed 12–19–06; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0282; FRL–8105–1]

Myclobutanil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of myclobutanil in or on hops, soybean seed, soybean forage, soybean hay, aspirated grain fractions, and soybean refined oil. Interregional Research Project #4 (IR–4) requested the tolerance for hops and Dow AgroSciences requested the tolerances for the soybean commodities under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective December 20, 2006. Objections and requests for hearings must be received on or before February 20, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0282. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0282 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 20, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0282, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 12, 2006 (71 FR 18740) (FRL–7773–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E6265) by Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.443 be amended by establishing a tolerance for combined residues of the fungicide myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), in or on hop, dried cones at 10 parts per million (ppm). That notice included a summary of the petition prepared by Dow AgroSciences, the registrant. There were no comments received in response to the notice of filing.

In the **Federal Register** of August 23, 2006 (71 FR 49448) (FRL–8073–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F6997) by Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR 180.443 be amended by establishing tolerances for combined residues of the fungicide myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), in or on soybean, aspirated grain fractions at 1.1 ppm; soybean, forage at 5.0 ppm; soybean, hay at 13.0 ppm; soybean, hulls at 0.06 ppm; soybean, meal at 0.03 ppm; soybean, oil at 0.1 ppm; and soybean, seed at 0.05 ppm. That notice included a summary of the petition prepared by Dow AgroSciences, the registrant. There were no comments received in response to the notice of filing.

Upon completing review of the current myclobutanil database, the Agency concluded that the appropriate tolerance levels for myclobutanil residues in or on pending crops should be established as follows: Hop, dried cones at 10 ppm; soybean, seed at 0.25 ppm; soybean, forage at 3.5 ppm; soybean, hay at 15 ppm; aspirated grain fractions at 35 ppm; and soybean, refined oil at 0.40 ppm. In addition, the proposed tolerances for soybean, hulls and soybean, meal were withdrawn because based on available processing data, tolerances for these commodities are not needed.

EPA is also deleting several established tolerances in 40 CFR 180.443(b) that are no longer needed as a result of this action. The tolerance deletions under 40 CFR 180.443(b) are time-limited tolerances established under section 18 emergency exemptions that are superseded by the establishment of general tolerances for myclobutanil and its metabolites under 40 CFR 180.443(a).

The revisions to 40 CFR 180.443(b) are as follows:

Delete the time-limited tolerance for hop, dried cone at 5.0 ppm. A tolerance for hop, dried cones at 10 ppm is established by this action under 40 CFR 180.443(a).

Delete the time-limited tolerance for soybean at 0.05 ppm. A tolerance for soybean, seed at 0.25 ppm is established by this action under 40 CFR 180.443(a).

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), in or on hop, dried cones at 10 ppm; soybean, seed at 0.25 ppm; soybean, forage at 3.5 ppm; soybean, hay at 15 ppm; grain, aspirated fractions at 35 ppm; and soybean, refined oil at 0.40 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by myclobutanil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.epa.gov/fedrgstr/EPA-PEST/2000/May/Day-10/p11571.htm* (**Federal Register** of May 10, 2000 (65 FR 29963) (FRL–6555–5).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory

animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm.*

A summary of the toxicological endpoints for myclobutanil used for human risk assessment can be found at *www.regulations.gov* in document 0002 (pages 6 and 7) in docket ID number EPA–HQ–OPP–2006–0282. To locate this information on the *Regulations.gov* website follow these steps:

- Select ''Advanced Search'', then ''Docket Search''
- In the ''Keyword'' field type the chemical name or insert the applicable ''Docket ID number.'' (example: EPA–HQ–OPP–2005–9999)
- Click the ''Submit'' button.

Follow the instructions on the *regulations.gov* web site to view the index for the docket and access available documents.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.443) for the combined residues of myclobutanil, in or on a variety of raw agricultural commodities. Tolerances have also been established for combined residues of myclobutanil in or on milk, egg, and fat, liver, meat, and meat byproducts of cattle, goat, hog, horse, and sheep as well as fat, meat, and meat byproducts of poultry. Risk assessments were conducted by EPA to assess dietary exposures from myclobutanil in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

An acute dietary exposure assessment was performed for females 13-49 years old (no endpoint was identified for the general U.S. population or any other population subgroup). In conducting the acute dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues and 100 percent crop treated (PCT) information for all registered and proposed uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A partially refined, chronic dietary exposure assessment was performed for the general U.S. population and various population subgroups using USDA Pesticide Data Program (PDP) monitoring data for apple juice, bananas (not plantains) and milk and assuming all other commodities covered by registered and proposed tolerances have residues at the appropriate tolerance value. Average PCT information was used for apple (except juice), apricots, asparagus, blackberry, cantaloupe, cherry, cucumber, grape, nectarine, peach, plum, pumpkin, raspberry, squash, strawberry, tomato, and watermelon; 100 PCT was assumed for all other registered and proposed uses.

iii. *Cancer.* The Agency has classified myclobutanil as Group E - not likely to be a human carcinogen. Myclobutanil was determined to be not carcinogenic in two acceptable animal studies. Therefore, a cancer dietary exposure assessment was not performed.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

40% of apples (except juice), 25% of apricots, 5% of asparagus, 15% of blackberry, 10 % of cantaloupe, 35 % of cherry, 1% of cucumber, 25% of grape, 15% of nectarine, 10% of peach, 10% of plum, 15% of pumpkin, 25% of raspberry, 10% of squash, 35% of strawberry, 5% of tomato, and 5% of watermelon.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five percent except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum.

EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five percent. In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent six years.

The Agency believes that the three conditions listed in Unit III.C.iv. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the

Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which myclobutanil may be applied in a particular area.

3. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for myclobutanil in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of myclobutanil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the PRZM/EXAMS and SCI–GROW models, the estimated environmental concentrations (EECs) of myclobutanil for acute exposures are estimated to be 15.3 parts per billion (ppb) for surface water and 0.35 ppb for ground water. The EECs for chronic exposures are estimated to be 8.5 ppb for surface water and 0.35 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM–FCID™). The estimates were calculated using the application rate for hops, which has the highest use rate among all existing and proposed uses. For acute dietary risk assessment the 1- in 10–year peak acute of 15.3 ppb was used to assess the contribution to drinking water and for chronic dietary risk assessment the 1- in 10–year estimated annual mean of 8.5 ppb was used to assess the contribution to drinking water.

4. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Myclobutanil is currently registered for use on the following residential non-dietary sites: Turf, ornamentals, and home garden uses on fruit trees, nut trees, berries, mint and vegetables. The risk assessment was conducted using the following residential exposure assumptions:

The homeowner use with the greatest potential for exposure is small-scale lawn application. Since myclobutanil is applied at 7- to 14–day intervals, only short-term exposure is expected for the residential handler. Short- and intermediate-term residential post-application exposures are also expected.

The current use patterns and labeling indicate that a variety of application equipment could be used by the homeowner to apply myclobutanil to ornamental plants, shrubs, fruit trees, home garden vegetables and lawns. Therefore, the following scenarios were assessed:

i. Aerosol Spray Can Application to Ornamentals and Fruit Trees

ii. Hose End Sprayer Application to Ornamentals and Fruit Trees

iii. Low-pressure (LP) Handwand Application to Ornamentals

iv. LP Handwand Application to Vegetables

v. Ready to use (RTU) Sprayer Application to Vegetables

vi. Hose End Sprayer Application to Vegetables

vii. Hose End Sprayer - Mix Your Own - Application to Turf

viii. Hose End Sprayer - Ready to Use - Application to Turf

ix. Belly Grinder Application to Turf

x. Broadcast Spreader Application to Turf

Unit exposure data were either taken from Pesticide Handler's Exposure Database (PHED) or from the home garden and turf application studies that were sponsored by the Outdoor Residential Exposure Task Force (ORETF).

Home garden post-application exposures can occur when home gardeners perform tasks such as weeding, pruning or hand harvesting following application of myclobutanil. In order to address these risks, the post-application exposure to home gardens and orchard scenarios were assessed based upon the Residential standard operating procedures (SOP) 3.0 for Garden Plants and SOP 4.0 for Trees.

Two dislodgeable foliar residue (DFR) studies on grapes in California were used to assess the home garden exposures. The studies were performed using airblast sprayers while the proposed home garden applications would be made with LP handwand or hose end sprayers. Based upon experience with other fungicides, however, it is anticipated that DFRs resulting from handwand applications would be similar to DFRs from airblast applications. The initial DFR was assumed to be 23% of the application rate.

''Pick your own'' exposures can occur at commercially operated ''pick your own'' strawberry farms and orchards where myclobutanil has been applied. To address these risks, post-application exposure for pick your own strawberries and tree fruit were assessed based upon the Residential SOP 15.0 for ''pick your own'' strawberries. The DFR data that were used for the home gardener post-application risks were also used to assess ''pick your own'' exposures. The exposure estimates used for pick your own exposures are considered conservative because that scenario is based upon a screening-level transfer coefficient (TC) and a dermal absorption factor of 50%.

The following scenarios were assessed for residential turf post-application exposures and risks:

a. Toddlers Playing on Treated Turf

b. Adults Performing Yard work on Treated Turf

c. Adults Playing Golf on Treated Turf

A turf transferable residue (TTR) study was used to assess the turf exposures. The field portion of this study was in North Carolina and California. The initial TTR for dermal exposures was assumed to be 2.4% of the application rate and was based upon an average of the days after treatment (DAT) of 0 and DAT of 3 for the California site. The maximum application rate for turf of 0.62-0.68 pounds active ingredient per acre (lb ai/A) was use to assess the turf exposures.

Additional information on residential exposure assumptions can be found at *http://www.regulations.gov* (Docket ID number EPA–HQ–OPP–2006–0282–0005, pages 13 through 17).

5. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Myclobutanil is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some

induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Myclobutanil is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazole alanine and triazole acetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including myclobutanil, U.S. EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov* (Docket ID number EPA–HQ–OPP–2005–0497).

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no indication of quantitative or qualitative increased susceptibility in rats or rabbits from *in utero* and/or postnatal exposure to myclobutanil. In the rat developmental toxicity study, maternal toxicity, which included rough hair coat and salivation, alopecia, desquamation and red exudate around mouth occurs at the same dose level as increases in incidences of 14th rudimentary and 7th cervical ribs in the fetuses. The maternal and developmental toxicity NOAELs in the rat developmental toxicity study were 93.8 mg/kg/day. EPA concludes that there is no evidence qualitative susceptibility in rat developmental toxicity study since the fetal variations (14th rudimentary ribs and 7th cervical ribs) are normal occurance control animals that occurred in the presence severe maternal toxicity (red exudate around mouth and salivation). In the rabbit developmental toxicity study there is reduced body weight and body weight gain during the dosing period, clinical signs of toxicity such as bloody urine and bloody urogenital or anal area and a possible increase in abortions (blood and/or aborted material in the cage pan) in the does at the same dose level as developmental toxicity manifested as increased resorptions, decreased litter size and decreased viability index. The maternal and developmental toxicity NOAELs in the rabbit developmental toxicity study were 93.8 mg/kg/day. EPA concludes that there is no evidence qualitative susceptibility in rabbit developmental toxicity study since the fetal effects (resorptions, decreased litter size and viability) occurred in the presence equally severe maternal toxicity (abortions, bloody urine and bloody urogenital or anal area). The maternal NOAEL in the 2-generation reproduction study was 50 ppm (2.5 mg/kg/day) based on hepatocellular hypertrophy and increased in liver weight seen at 200 ppm (10 mg/kg/day; LOAEL). The offspring toxicity NOAEL was 200 ppm (10 mg/kg/day) based on decreased in pup body weight gain during lactation seen at 1,000 ppm (50 mg/kg/day; LOAEL). The reproductive toxicity NOAEL was 200 ppm (10 mg/kg/day) based on increased incidences in the number of still born pups and atrophy of the testes, epididymides and prostate observed at 1,000 ppm (50 mg/kg/day; LOAEL). EPA concludes that there is no evidence on increased susceptibility (qualitative or quantitative) in the 2-generation reproduction study in rats because the offspring and reproductive toxicity were observed at a higher dose than the dose that caused maternal toxicity.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. The decision is base on the following findings:

i. There is a complete toxicity data base for myclobutanil.

ii. There was no evidence of increased susceptibility in the developmental toxicity studies with rats and rabbits.

iii. A developmental neurotoxicity study is not required because neurotoxic compounds of similar structure were not identified and there was no evidence of neurotoxicity in the current toxicity database.

iv. The exposure assessments will not underestimate the potential dietary (food and drinking water) and residential (non-occupational) exposures for infants and children from the use of myclobutanil.

v. The acute dietary food exposure assessment (females 13-49 years old only) utilizes existing and proposed tolerance level residues and 100 PCT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated.

vi. The chronic dietary food exposure assessment utilizes existing and proposed tolerance level residues; USDA Pesticide Data Program (PDP) monitoring data for apple juice, bananas (not plantains) and milk; average PCT data for some commodities and 100 PCT information for all other registered and proposed uses. The chronic assessment is somewhat refined and based on reliable data and will not underestimate exposure/risk.

vii. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters, which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

viii. The residential handler assessment is based upon the residential SOPs and utilized unit exposure data

from the ORETF and the PHED. The residential post-application assessment is based upon chemical-specific turf transferable residue (TTR) data and DFR data. The chemical-specific study data as well as the surrogate study data used are reliable and also are not expected to underestimate risk to adults as well as to children. In a few cases where chemical-specific data were not available, the SOPs were used alone. The residential SOPs are based upon reasonable ''worst-case'' assumptions and are not expected to underestimate risk. These assessments of exposure are not likely to underestimate the resulting estimates of risk from exposure to myclobutanil.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to myclobutanil will occupy 2.4% of the acute Adjusted Population Dose (aPAD) for females 13 years and older. No endpoint was identified for the general U.S. population or any other population subgroup. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to myclobutanil from food and water will utilize 10% of the chronic Population Adjusted Dose (cPAD) for the U.S. population, 17% of the cPAD for all infants less that 1 year old, and 25% of the cPAD for children 1-2 years old, the subpopulation at greatest exposure. There are no residential uses for myclobutanil that result in chronic residential exposure. Therefore, chronic residential exposure to residues of myclobutanil is not expected. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The short-term aggregate risk assessments estimate risks likely to result from 1-30 days of exposure to myclobutanil residues in food, drinking water, and residential pesticide uses.

Myclobutanil is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food, water and short-term exposures for myclobutanil.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water and residential exposures aggregated result in aggregate margin of exposures (MOEs) of 180 for the general U.S. population for handler exposures; 300 for the general U.S. population for home gardens post application exposures; 110 for the general U.S. population for ''Pick Your Own'' fruit tree post application exposures; 130 for the general U.S. population for heavy yard work for turf post application exposures; 1,300 for the general U.S. population for exposures when playing golf and 130 for children 1-2 years old when playing on the lawn post application exposures. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food, water and residential uses. Therefore, EPA does not expect short-term aggregate exposure to exceed the Agency's LOC.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The intermediate-term aggregate risk assessment estimates risks likely to result from 1 to 6 months exposure to myclobutanil residues in food, drinking water, and residential pesticide scenarios.

Myclobutanil is currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for myclobutanil.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 300 for the general U.S. population for home garden post application exposures; 110 for the general U.S. population for ''Pick Your Own'' fruit tree post application exposures; 130 for the general U.S. population for heavy yard work for turf post application exposures; 1,300 for the general U.S. population for exposures when playing golf and 130 for children 1-2 years old when playing on the lawn post application exposures. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food, water, and residential uses. Therefore, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. The Agency has classified myclobutanil as Group E - not likely to be a human carcinogen. Myclobutanil was determined to be not carcinogenic in two acceptable animal studies. Myclobutanil is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to myclobutanil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement method is available to enforce the proposed tolerances on soybeans and hops. Quantitation is by gas-liquid chromatography (GLC) using a nitrogen/phosphorus (N/P) detector for myclobutanil and an electron capture detector (Ni63) for residues measured as the alcohol metabolite. The EPA has conducted a successful method validation of Method 34S–88–10, and the method has been forwarded to the Food and Drug Administration (FDA) for inclusion in Pesticide Analytical Method Volume II (PAM) Vol. II.

Enforcement methods for the established tolerances on livestock commodities are Methods 34S–88–22, 34S–88–15, 31S–87–02, and 34S–88–21 These methods have been submitted for publication in PAM II.

These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no current Codex, Canadian or Mexican maximum residue limits (MRLs) for residues of myclobutanil in/on soybeans. Therefore, harmonization is not an issue. There are no current Canadian or Mexican maximum residue limits (MRLs) for residues of myclobutanil in/on hops. However, there is a Codex MRL of 2 ppm for the parent compound myclobutanil in/on hops, dry. EPA has concluded the submitted residue chemistry data support a tolerance of 10 ppm for residues of myclobutanil and its alcohol metabolite RH-9090 (free and bound). Therefore, harmonization with the Codex MRL is not possible.

V. Conclusion

Therefore, tolerances are established for combined residues of myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free

and bound), in or on hop, dried cones at 10 ppm; soybean, seed at 0.25 ppm; soybean, forage at 3.5 ppm; soybean, hay at 15 ppm; grain, aspirated fractions at 35 ppm; and soybean, refined oil at 0.40 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.443 is amended:

■ a. In paragraph (a), in the table, by alphabetically adding commodities to read as set forth below; and

■ b. In paragraph (b), in the table, by removing the commodities ''Hop, dried cone'' and ''Soybean''.

§ 180.443 Myclobutanil; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Grain, aspirated fractions	35
* * *	* *
Hop, dried cones	10
* * *	* *
Soybean, forage	3.5
Soybean, hay	15
Soybean, refined oil	0.40
Soybean, seed	0.25

* * * * *

[FR Doc. E6–21489 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0532; FRL–8104–6]

Dimethomorph; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the fungicide, dimethomorph, (E,Z) 4-[3-(4-

chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl] morpholine in or on brassica, head and stem, subgroup 5A. The Interregional Research Project No. 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540 requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective December 20, 2006. Objections and requests for hearings must be received on or before February 20, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0532. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0532 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 20, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0532, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 10, 2006 (71 FR 12356) (FRL–7761–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E6848) by IR–4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.493 be amended by establishing a tolerance for residues of the fungicide, dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl] morpholine in or on Brassica head and stem (Subgroup 5A) at 2.0 parts per million (ppm). That notice included a summary of the petition prepared by BASF, the registrant. There were no comments received in response to the notice of filing.

Supporting documents including the Agency's Human Health Risk Assessment of dimethomorph and other documents are available at *www.regulations.gov* under the index of the docket for this action, docket ID number EPA–HQ–OPP–2005–0537.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the

pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of dimethomorph on brassica, head and stem, subgroup 5A food commodities at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by dimethomorph as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *www.regulations.gov* under docket ID number EPA–HQ–OPP–2005–0532; entitled, ''Amended: Dimethomorph: Human Health Risk Assessment for Proposed Uses on Brassica Stem and Head Subgroup 5A'', dated November 15, 2006.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for dimethomorph used for human risk assessment can be found at *www.regulation.gov* under docket ID number EPA–HQ–OPP–2005–0532, entitled, ''Amended: Dimethomorph: Human Health Risk Assessment for Proposed Uses on Brassica Stem and Head Subgroup 5A'', dated November 15, 2006.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.493) for the residues of dimethomorph, in or on a variety of raw agricultural commodities including: Brassica, leafy greens, subgroup 5B; lettuce, head; lettuce, leaf; potato, wet peel; taro, corm; taro, leaves; vegetable, bulb, group 3; vegetable, cucurbit, group 9; and vegetable, fruiting, group 8. Risk assessments were conducted by EPA to assess dietary exposures from dimethomorph in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for dimethomorph. A quantitative acute dietary exposure and risk assessment was therefore not conducted for dimethomorph. No acute risk is expected from exposure to dimethomorph.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. In conducting a Tier 1 chronic dietary risk assessment, the Agency made the following conservative assumptions:

a. All commodities having dimethomorph tolerances contain residues at the level of the tolerance, and

b. Treatment of 100% of all registered and proposed crops.

iii. *Cancer.* EPA has classified dimethomorph ''not likely'' to be human carcinogen. Therefore, a quantitative cancer dietary exposure and risk assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for dimethomorph in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of dimethomorph. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index*.

Acute and chronic estimated drinking water concentrations (EDWCs) of dimethomorph in surface water were calculated using Generic Estimated Environmental Concentration (GENEEC) Model. Drinking water residues were then incorporated into the DEEM-FCID(™) into the food categories ''water, direct, all sources'' and ''water, indirect, all sources.''

Based on the Tier 1 GENEEC and Surface Water and Screening Concentrations in Ground Water (SCI-GROW) models, the EDWCs of dimethomorph for chronic exposures are 28.5 parts per billion (ppb) for surface water and 0.30 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control,

indoor pest control, termiticides, and flea and tick control on pets).

Dimethomorph is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to dimethomorph and any other substances and dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethomorph has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. The toxicology data on dimethomorph provide no indication of enhanced sensitivity of infants and children based on the results from developmental studies conducted with rats and rabbits as well as a 2-generation reproduction study conducted with rats. There were no toxic effects observed in either the rat developmental toxicity or the rat 2-generation reproductive toxicity studies that were lower than doses which produced toxic effects in the parents. No developmental toxicity was demonstrated in the rabbit developmental toxicity study. The developmental and reproductive toxicity data did not indicate increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for dimethomorph is complete.

ii. There is no evidence that dimethomorph results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated (CT) and tolerance-level residues. Conservative ground water and surface water modeling estimates were used.

Residential exposure to dimethomorph is not expected since there are no currently registered residential uses for the pesticide.

E. Aggregate Risks and Determination of Safety

In examining aggregate risk, the Agency takes into account all available reliable information concerning exposures from pesticide residues in food and other exposures including drinking water and potential residential exposure to pesticides from such uses as lawn care applications (turf), golf course and others. Aggregate risk assessment considerations must also include potential exposures from oral, dermal and inhalation routes.

1. *Acute risk*. No acute dietary toxicity endpoints were identified; no acute risk is expected from exposure to dimethomorph.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to dimethomorph from food + water will utilize 8.6% of the chronic population adjusted dose (cPAD) for the U.S. population, 7.0% of the cPAD for all infants < 1 year, and 19.9% of the cPAD for children -2 years. There are no residential uses for dimethomorph that result in chronic residential exposure. Risk estimates for all population subgroups are below the Agency's LOC (do not exceed 100% of the cPAD).

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Dimethomorph is not registered for use on any sites that would result in residential exposure. Therefore, a short-tern aggregate risk assessment is not required. The aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. *Intermediate-term risk* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Dimethomorph is not registered for use on any sites that would result in residential exposure. Therefore, an intermediate-term risk assessment is not required. The aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. Dimethomorph has been classified as a Group E carcinogen showing no evidence of human carcinogenicity. This classification was based upon lack of evidence of carcinogenicity in rat and mice studies. The Agency concludes that the pesticidal uses of dimethomorph are not likely to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to dimethomorph residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

A reliable method for the determination of dimethomorph residues in brassica, head and stem subgroup 5A exist; this method is the Food and Drug Administration (FDA) Multi-Residue Method, Protocol D, as published in the Pesticide Analytical Manual I. In addition, the method may be requested from: Chief, Analytical Chemistry Branch, Environmental

Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex, Canadian or Mexican maximum residue limits or tolerance for dimethomorph in or on brassica, head and stem, subgroup 5A.

V. Conclusion

Therefore, the tolerance is established for residues of dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl] morpholine in or on brassica, head and stem, subgroup 5A at 2.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.493 is amended by alphabetically adding a commodity to the table in paragraph (a) to read as follows:

§ 180.493 Dimethomorph; tolerance for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Brassica, head and stem, subgroup 5A	2.0
* * *	* *

* * * * * *

[FR Doc. E6–21499 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0823; FRL–8100–9]

Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of azoxystrobin and its *Z* isomer, on rice, wild. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on rice, wild. This regulation establishes a maximum permissible level for combined residues of azoxystrobin in this food commodity. The tolerance expires and is revoked on December 31, 2009.

DATES: This regulation is effective December 20, 2006. Objections and requests for hearings must be received on or before February 20, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0823. All documents in the docket are listed on the regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; e-mail address: *Sec-18-Mailbox@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0823 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 20, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0823, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing time-limited tolerances for combined residues of the fungicide, azoxystrobin, methyl (*E*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate and the *Z* isomer of azoxystrobin, methyl (*Z*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate, on rice, wild at 5.0 parts per million (ppm). This tolerance expires and is revoked on December 31, 2009. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR).

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical combined residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing

notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Azoxystrobin on Rice, Wild and FFDCA Tolerances

The Minnesota Department of Agriculture declared a crisis exemption under FIFRA section 18 for the use of azoxystrobin on rice, wild for control of stem rot disease caused by *Nakataea sigmoidea*. Minnesota states that it appears that stem rot is widespread throughout the state and can cause significant damage.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by combined residues of azoxystrobin and its *Z* isomer on rice, wild. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance expires and is revoked on December 31, 2009, under section 408(l)(5) of the FFDCA, combined residues of the pesticide not in excess of the amount specified in the tolerance remaining on rice, wild after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the combined residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the combined residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether azoxystrobin meets EPA's registration requirements for use on rice, wild or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of azoxystrobin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Minnesota to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for azoxystrobin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide combined residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of azoxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for combined residues of azoxystrobin and its *Z* isomer on rice, wild at 5.0 ppm. On August 23, 2006 the Agency published in the **Federal Register** a final rule (71 FR 49358) (FRL–8086–9) establishing tolerances for combined residues of azoxystrobin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione in or on vegetable, foliage of legume, group 7; vegetable, fruiting, group 8 (except tomato); pea and bean, succulent shelled, subgroup 6B; pea and bean, dried shelled, except soybean, subgroup 6C; citrus, dried pulp; citrus, oil; and fruit, citrus, Group 10. When the Agency conducted the risk assessments in support of those tolerance actions, the Agency also assessed the use of azoxystrobin on wild rice under section 18 of FIFRA. Therefore, establishing the rice, wild tolerance will not change the most recent estimated aggregate risks resulting from use of azoxystrobin, as discussed in the August 23, 2006 **Federal Register**. Refer to the August 23, 2006 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of August 23, 2006, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to azoxystrobin combined residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography-nitrogen phosphorus detection) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for azoxystrobin on rice, wild.

VI. Conclusion

Therefore, tolerances are established for combined residues of azoxystrobin, methyl (*E*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate and the *Z* isomer of azoxystrobin, methyl (*Z*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate, on rice, wild at 5.0 ppm.

VII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 6, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.507 is amended by alphabetically adding the commodity ''Rice, wild'' to the table in paragraph (b) to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* *	*	* *
Rice, wild	5.0	12/31/09
* *	*	* *

* * * * *

[FR Doc. E6–21498 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0177; FRL–8105–9]

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of glyphosate in or on sunflower; safflower; noni; pea, dry; and vegetable, legume, group 6 except soybean, and pea, dry. The

Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective December 20, 2006. Objections and requests for hearings must be received on or before February 20, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0177. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e–CFR site at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0177 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 20, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0177, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on–line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 29, 2006 (71 FR 15734) (FRL–7766–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 4E6878 and 5E6987) by IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petitions requested that 40 CFR 180.364 be amended by establishing tolerances for residues of the herbicide glyphosate, (*N*-phosphonomethyl)glycine, in or on sunflower and safflower at 25 parts per million (ppm) (PP 4E6878); vegetable, legume, group 6, except soybean at 8.0 ppm (5E6987); and mulberry, Indian at 0.2 ppm (5E6987). Following review of the residue chemistry data, EPA determined that the commodities term and tolerance levels should be revised to the following: Sunflower at 85 ppm; safflower at 85 ppm; pea, dry at 8.0 ppm; vegetable, legume, group 6 except soybean and pea, dry at 5.0 ppm; and noni at 0.20 ppm. This notice included a summary of the petitions prepared by Monsanto, the registrant. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including

all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA–PEST/1997/November/Day–26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of glyphosate on sunflower at 85 ppm; safflower at 85 ppm; noni at 0.20 ppm; pea, dry at 8.0 ppm; and vegetable, legume, group 6 except soybean and pea, dry at 5.0 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by glyphosate as well as the no–observed–adverse–effect–level (NOAEL) and the lowest–observed–adverse–effect–level (LOAEL) from the toxicity studies can be found at *www.regulations.gov*. Docket ID EPA–HQ–OPP–2006–0177, Glyphosate Indian Mulberry and Dry Pea Human Health Risk Assessment, pages 10–11, and Glyphosate Safflower and Sunflower Human Health Risk Assessment, pages 12–14.

To locate this information on the *Regulations.gov* website follow these steps:

1. Select ''Advanced Search,'' then ''Docket Search''

2. In the ''Keyword'' field type the chemical name or insert the applicable ''Docket ID number.'' (example: EPA–HQ–OPP–2006–0177).

3 Click the ''Submit'' button.

Follow the instructions on the regulations.gov website to view the index for the docket and access available documents.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for glyphosate used for human risk assessment can be found at *www.regulations.gov,* Docket ID EPA–HQ–OPP–2006–0177, Glyphosate Indian Mulberry and Dry Pea Human Health Risk Assessment, pages 16–17, and Glyphosate Safflower and Sunflower Human Health Risk Assessment, pages 18–19.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established 40 CFR 180.364 for the residues of glyphosate, in or on a variety of raw agricultural commodities. Additionally tolerances are established for meat, milk, poultry and egg. Risk assessments were conducted by EPA to assess dietary exposures from glyphosate in food as follows:

i. *Acute exposure*. No acute effects were identified in the toxicological studies for glyphosate, therefore a quantitative acute dietary exposure assessment is not necessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessment: The Tier 1 chronic dietary analysis for glyphosate is a conservative estimate of dietary exposure that used tolerance level residues and 100% percent crop treated (PCT).

iii. *Cancer*. Glyphosate is classified as a not likely human carcinogen, so a cancer dietary exposure analysis is not necessary.

2. *Dietary exposure from drinking water*.The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for glyphosate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of glyphosate. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/index.htm*.

Glyphosate is registered for aquatic use to control weeds in water bodies. Therefore, the Agency estimated the concentration in surface water resulting from direct application to a water body 6 feet deep. This estimate is based on a dilution model that does not take into account degradation in the water body and partitioning into the water column-sediment phases. The estimate considered a single broadcast application at the maximum application rate of 3.75 lb of glyphosate free acid per acre. Based on a maximum total application rate of 3.75 pounds of glyphosate free acid per acre, the estimated concentration for use in the drinking water assessment is 230 g/L parts per billion (ppb).

Based on the generic expected environmental concentration (GENEEC) and screening concentration in groundwater (SCI-GROW) models, the

estimated environmental concentrations (EECs) of glyphosate for acute exposures are estimated to be 21 ppb for surface water and 0.0038 ppb for ground water. The EECs for chronic exposures are estimated to be 0.83 ppb for surface water and 0.0038 ppb for ground water, based on glyphosate treatment in crops.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Glyphosate is currently registered for use on broadcast and spot treatments on home lawns and gardens. Glyphosate, isopropylamine salt is registered for broadcast and spot treatments on home lawns and gardens. Glyphosate products for homeowner use are packaged as ready-to-mix formulations and ready-to-use sprayers and are very common in home and garden stores in the U.S. Glyphosate products are also used by lawn care operators for broadcast and spot treatment weed control programs on homeowner lawns. Glyphosate products are also labeled for turf renovation.

The risk assessment was conducted using the following residential exposure assumptions: Based on the registered residential use patterns, there is a potential for short-term dermal and inhalation exposures to homeowners who apply products containing glyphosate (residential handlers). Additionally, based on the results of environmental fate studies, there is a potential for short and intermediate-term post-application dermal exposures by adults and toddlers and incidental ingestion exposures by toddlers. However, since short or intermediate-term dermal or inhalation endpoints were not identified, no residential handler or post-application dermal assessment is necessary; only a post-application toddler assessment for incidental ingestion exposures was performed.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to glyphosate and any other substances and glyphosate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that glyphosate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. Based on the available data, there was no evidence of quantitative or qualitative increased susceptibility following *in utero* glyphosate exposure to rats and rabbits, or following prenatal/postnatal exposure in the 2-generation reproduction study in rats. A developmental neurotoxicity study was not required.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

There is no evidence of quantitative or qualitative increased susceptibility of the young demonstrated in the prenatal developmental studies in rats and rabbits and prenatal/postnatal reproduction study in rats ii. the toxicology data base is complete iii. a developmental neurotoxicity study is not required; and iv. the dietary (food, drinking water, and residential) exposure assessments will not underestimate the potential exposures for infants and children.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. There were no toxic effects attributable to a single dose. An endpoint of concern was not identified to quantitate an acute-dietary risk to the U.S. general population or to the subpopulation females 13-50 years old. Therefore, glyphosate is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to glyphosate from food and water will utilize 2% of the chronic population adjusted dose (cPAD) for the U.S. population, 7% of the cPAD for all infants <1 year old, and 5% of the cPAD for children 1-2 years old. Based on the use pattern, chronic residential exposure to residues of glyphosate is not expected.

3. *Short-term and Intermediate-term risk*. Short term and Intermediate term aggregate exposures take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Glyphosate is currently registered for uses that could result in short and intermediate term residential exposures. Since the incidental oral ingestion exposure estimates for toddlers from residential turf exposures exceeded the incidental oral exposure estimates from post-application swimmer exposures, the Agency conducted this risk assessment using exposure estimates from the worst-case situation. No attempt was made to combine exposures from the swimmer and residential turf scenarios due to the low probability of both occurring concurrently.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,400 for children 1-2 years old (the most highly exposed population subgroup), and 4,610 for adults 20-49 years old.

4. *Aggregate cancer risk for U.S. population*. Glyphosate has been classified by the Cancer Peer Review Committee as ''a Group E'' chemical-negative as a human carcinogen - based on the absence of carcinogenicity in mice and rats. Therefore, a cancer risk assessment was not conducted.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to glyphosate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant and livestock commodities. These methods include Gas Liquid Chromatography (GLC) (Method I in Pesticides Analytical Manual II; the limit of detection is 0.05 ppm) and high-performance liquid chromatography (HPLC) with fluorometric detection. These analytical methods are adequate for residue data collection and enforcement of the proposed tolerances of glyphosate in/on noni and dry peas. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

The Codex Alimentarius Commission has established several maximum residue limits (MRLs) for glyphosate residues in various commodities. The Codex and U.S. tolerances are in harmony with respect to MRL/tolerance expression; both regulate the parent glyphosate only. The proposed tolerance of 8.0 ppm in dry peas exceeds the existing Codex MRL of 5.0 ppm. This discrepancy is not expected to result in a trade barrier, however, because the United States accounts for only about 5% of world dry production and is not expected to be a significant exporter of this commodity. There are currently no Codex Maximum Residue Limits for residues of glyphosate on safflower, sunflower, or noni; therefore, there are no international harmonization issues associated with these commodities.

V. Conclusion

Therefore, the tolerances are established for residues of glyphosate, (*N*-phosphonomethyl)glycine, in or on sunflower at 85 ppm; safflower at 85 ppm; noni at 0.20 ppm; pea, dry at 8.0 ppm; and vegetable, legume, group 6 except soybean and pea,dry at 5.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: December 6, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.364 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Noni	0.20
* * *	* *
Pea, dry	8.0
* * *	* *
Safflower	85
* * *	* *
Sunflower	85
* * *	* *
Vegetable, legume, group 6 except soybean and pea,dry	5.0
* * *	* *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E6–21490 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0145; FRL–8107–8]

Boscalid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4′-chloro[1,1′-biphenyl]-2-yl) in or on leafy greens subgroup 4A, except head and leaf lettuce, and leafy petioles subgroup 4B. Interregional Research Project No. 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective December 20, 2006. Objections and requests for hearings must be received on or before February 20, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0145. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0145 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 20, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the

public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0145, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of June 14, 2006 (71 FR 34342–34344) (FRL–8070–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6791) by IR–4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.589 be amended by establishing tolerances for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl), in or on the raw agricultural commodities as follows: leafy greens subgroup 4A, expect head and leaf lettuce at 60 parts per million (ppm) and leaf petioles subgroup 4B at 45 ppm. That notice included a summary of the petition prepared by BASF, the registrant. Comments on the notice of filing were received from one private citizen. EPA's response to these comments is discussed in Unit IV. C.

EPA is also deleting several established tolerances in 180.589(a)(1) that are no longer needed as a result of this action. The revisions to 180.589(a)(1) are as follows:

1. Delete celery at 45 ppm, and replaced with leaf petioles, subgroup, 4B, at 45 ppm.

2. Delete spinach at 60 ppm, and replaced with leafy greens, subgroup 4A, except head and leaf lettuce, at 60 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm* and *http://www.epa.gov/fedrgstr/EPA-PEST/2003/July/Day-30/p19357.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl), in or on the raw agricultural commodities as follows: leafy greens subgroup 4A, expect head and leaf lettuce at 60 ppm and leaf petioles subgroup 4B at 45 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by boscalid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of July 30, 2003 (68 FR 44640) (FRL–7319–6) (*http://www.epa.gov/fedrgstr/EPA-PEST/2003/July/Day-30/p19357.htm*).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for boscalid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of July 30, 2003 (68 FR 44640) (FRL–7319–6).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established 40 CFR 180.589 (a)(1) for the residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4′-chloro[1,1′-biphenyl]-2-yl) in or on a variety of raw agricultural commodities. Tolerances have been established under 40 CFR 180.589(a)(2) for the combined residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4′-chloro[1,1′-biphenyl]-2-yl) and metabolites 2-chloro-N-(4′-chloro-5-hydroxy-biphenyl-2-yl)nicotinamide and glucuronic acid conjugate of 2-chloro-N-(4′-chloro-5-hydroxy-biphenyl-2-yl)nicotinamide in or on egg; milk;

and fat, meat and meat byproducts of cattle, goat, hog, horse, poultry, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from boscalid in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure. No such effects were identified in the toxicological studies for boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl); therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: An unrefined, chronic dietary exposure assessment using tolerance-level residues, default processing factors, and assuming 100% crop treated (CT) for all registered and proposed commodities was conducted for the general U.S. population and all population subgroups.

iii. *Cancer*. A quantitative cancer exposure assessment is not necessary because EPA concluded that boscalid is unlikely to pose a carcinogenic risk to humans. This conclusion was based on the following weight of evidence considerations. First, in male Wistar rats, there was a significant trend (but not pairwise comparison) for the combined thyroid adenomas and carcinomas. This trend was driven by the increase in adenomas. Second, in the female rats, there was only a borderline significant trend for thyroid adenomas (there were no carcinomas). Third, the mouse study was negative as were all of the mutagenic tests. Based on this weak evidence of carcinogenic effects, the Agency concluded that boscalid is not expected to pose a carcinogenic risk.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for boscalid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of boscalid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the FIRST and SCI-GROW models, the estimated environmental concentrations (EECs) of boscalid for acute exposures are estimated to be 87.53 parts per billion (ppb) for surface water and 0.63 ppb for ground water. The EECs for chronic exposures are estimated to be 25.77 ppb for surface water and 0.63 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™, Version 2.03). For chronic dietary risk assessment, the annual average concentration of 25.77 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Boscalid is currently registered for use on turf. However, the boscalid registration for turf specifies that this product is intended for golf course use only, and not for use on residential turfgrass or turfgrass being grown for sale or other commercial use such as sod production. Although the registration does not indicate that the product is applied by licensed or commercial applicators, homeowners will not be applying the product to golf courses. Therefore, a risk assessment for residential handler exposure is not required. Boscalid is also registered for use on various fruit crops including U-pick operations. Based on these registrations the EPA determined there are two recreational scenarios associated with boscalid that could lead to non-dietary exposures for adults and children:Adults and youth golfing, and adults and children picking their own fruit.

Because U-pick is a one-time event (duration <1 day) and the Agency found that the oral studies indicated there were no endpoints appropriate to quantitate acute risk, the U-pick exposure was not calculated. Therefore, only non-dietary exposure was estimated for the golfing scenario. The risk assessment was conducted using the following residential exposure assumptions: post-application exposures to individuals that occur as a result of being in an environment that has been previously treated with a pesticide. Due to residential application practices and the half-lives observed in the turf transferable residue study, intermediate- and long-term post-application exposures are not expected. Only short-term post application exposures are anticipated for golfers. The scenarios likely to result in dermal short-term exposures are as follows: Adult golfer dermal exposure from contacting treated turf, and adolescent golfer dermal exposure from contacting treated turf.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to boscalid and any other substances and boscalid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that boscalid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that

poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There was no evidence of increased susceptibility in the developmental rat study as no developmental toxicity was seen at the highest dose tested (Limit Dose). There was evidence of qualitative (not quantitative) increased susceptibility in the developmental rabbit study as characterized by an increased incidence of abortions or early delivery at the highest dose tested (1,000 millogram/kilogram/day (mg/kg/day)). It could not be ascertained if the abortions were the result of a treatment-related effect on either the dams, the fetuses or both. There was quantitative evidence of increased susceptibility in the 2-generation reproduction study in rats, where decreases in body weights and body weight gains in male offspring were seen in the F2 generation at a dose that was lower than the dose that induced parental/systemic toxicity. The offspring NOAEL was 10.1/106.8 mg/kg/day in males and females, respectively, and the parental/systemic NOAEL was 101.2/1062.0 mg/kg/day in males and females, respectively. There was quantitative evidence of increased susceptibility in the developmental neurotoxicity study in rats, where decreases in pup body weights (PND 4) and body weight gains (PND 1–4) were seen in the absence of any maternal toxicity. The offspring toxicity NOAEL was 14 mg/kg/day and the maternal NOAEL was 1,442 mg/kg/day.

The degree of concern is low for the qualitative evidence of susceptibility seen in the rabbit developmental study as the increased abortions or early delivery was seen only at the Limit Dose and not at the lower levels (i.e. a high-dose effect) and the abortions may have been due to maternal stress. The degree of concern is also low for the quantitative evidence of susceptibility seen in the 2-generation reproduction study in rats because the decreases in body weight and body weight gains were seen primarily in the F2 generation. These may have been due to exposure of the parental animals to high doses (above the Limit Dose). The dose selected for chronic dietary and non-dietary exposure risk assessments would address the concern for the body weight effects. Finally, the degree of concern is low for the quantitative evidence of susceptibility seen in the developmental neurotoxicity study because the decreases in pup body weights seen onpostnatal days 1 through 4 (and not at any other time periods) were most likely due to maternal toxicity (the maternal animals were exposed to a very high dose exceeding the limit dose, i.e., 1,442 mg/kg/day); and no treatment-related effects on body weight, body weight gain or any other parameter were noted at postnatal day 21.

EPA has concluded that there are no residual uncertainties for pre- and postnatal toxicity as the degree of concern is low for the susceptibility seen in the above studies, and the dose and endpoints selected for the overall risk assessments will address the concerns for the body weight effects seen in the offspring. Although the dose selected for overall risk assessments (21.8 mg/kg/day) is higher than the NOAELs in the 2-generation reproduction study (10.1 mg/kg/day) and the developmental neurotoxicity study (14 mg/kg/day), these differences are considered to be an artifact of the dose selection process in these studies. For example, there is a 10-fold difference between the LOAEL (106.8 mg/kg/day) and the NOAEL (10.1 mg/kg/day) in the two generation reproduction study. A similar pattern was seen with regard to the developmental neurotoxicity study, where there is also a 10-fold difference between the LOAEL (147 mg/kg/day) and the NOAEL (14 mg/kg/day). There is only a 2-3 fold difference between the LOAEL (57 mg/kg/day) and the NOAEL (21.8 mg/kg/day) in the critical study used for risk assessment. Because the gap between the NOAEL and LOAEL in the 2-generation reproduction and developmental neurotoxicity studies was large and the effects at the LOAELs were minimal, the true no-observed-adverse-effect-level was probably considerably higher. Therefore, the selection of the NOAEL of 21.8 mg/kg/day from the 1–year dog study is conservative and appropriate for the overall risk assessments. In addition, the endpoints for risk assessment are based on thyroid effects seen in multiple species (mice, rats and dogs) and after various exposure durations (subchronic and chronic exposures) which were not observed at the LOAELs in either the two-generation reproduction or the developmental neurotoxicity studies.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings: The toxicity database for boscalid is complete and for the reasons explained above, there is low concern for pre- and postnatal toxicity.

There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. Conservative ground and surface water modeling estimates were used. Similarly conservative residential SOPs were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by boscalid.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13–50 years old. No acute risk is expected from exposure to boscalid.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to boscalid from food and water will utilize 11% of the chronic population adjusted dose (cPAD) for the U.S. population, 24% of the cPAD for all infants less than 1 year old, and 38% of the cPAD for children 1–2 years old, the most highly exposed population subgroup. There are no residential uses for boscalid that result in chronic residential exposure to boscalid. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in an aggregate margin of exposure (MOE) of 1,400 for the general U.S. population. This MOE is considered to be representative of young golfers as well since young golfers and adults possess similar body surface area to weight ratios and because the dietary exposure for youth (13–19 years old) is less than that of the general U.S. population. Therefore the short-term aggregate risk and exposure is not of concern to the Agency.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background

exposure level). Because no intermediate term, non-occupational exposures are anticipated from the use of boscalid, boscalid is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population*. Based on the weight of evidence evaluation described previously herein, EPA concluded that boscalid is not expected to pose a carcinogenic risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to boscalid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, method D0008, gas chromatography/mass spectroscopy (GC/MS) for plants and Method DFG S19, gas chromatography/electron-capture detection electron-capture detection (GC/ECD) for animals is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no International or Codex maximum residue levels (MRLs) for boscalid.

C. Response to Comments

Several comments were received from a private citizen objecting to IR-4 proposing to increase the use of this pesticide and establishment of tolerances. The Agency has received these same comments from this commenter on numerous previous occasions. Refer to **Federal Register** 70 FR 37686 (June 30, 2005), 70 FR 1354 (January 7, 2005), 69 FR 63096–63098 (October 29, 2004) for the Agency's response to these objections.

V. Conclusion

Therefore, tolerances are established for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl), regulated chemical, in or on leafy greens subgroup 4A, except head and leaf lettuce at 60 ppm and leaf petioles subgroup 4B at 45 ppm. IR-4 is requesting the establishment of tolerances for leafy greens subgroup 4A, except head and leaf lettuce, and leaf petioles subgroup 4B. The Agency has approved celery and spinach residue data (previously submitted) and established tolerances for those commodities. These data satisfy the residue data requirements for the requested subgroups, and are accepted as surrogate data for the use of establishing tolerances. Therefore, leafy green subgroup 4A, except head and leaf lettuce, and leafy petioles subgroup 4B will replace the existing tolerances for celery and spinach, respectively.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.589 is amended in the table to paragraph (a)(1) by removing the commodities ''celery'' and ''spinach'' and by adding alphabetically new commodities to read as follows:

§ 180.589 Boscalid; tolerances for residues.

(a)* * *

(1)* * *

Commodity	Parts per million
* * * *	*
Leafy greens, subgroup 4A, except head and leaf lettuce	60
Leafy petioles, subgroup 4B	45
* * * *	*

* * * * * *

[FR Doc. E6–21491 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0655; FRL–8095–4]

Metconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the fungicide metconazole, 5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazole-1-yl-methyl)cyclopentanol in or on aspirated grain fractions; egg; meat, fat and meat by-products of cattle, goat, hog, horse, poultry and sheep; milk; soybean, hulls; soybean, meal; soybean, refined oil; and soybean, seed. This action is associated with EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on soybeans. This regulation establishes a maximum permissible level for residues of metconazole in these food commodities. These tolerances will expire and be revoked on December 31, 2010.

DATES: This regulation is effective December 20, 2006. Objections and requests for hearings must be received on or before February 20, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0655. All documents in the docket are listed on the regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Room S-4400, One Potomac Yard (South Bldg.), 2777 South Crystal Dr. Arlington, VA 22202-3553. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax: (703) 308–8041; e-mail address: *rodia.carmen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by the Food Quality Protection Act of 1996 (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0655 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 20, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not

contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0655, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP), Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Room S–4400, One Potomac Yard (South Bldg.), 2777 South Crystal Dr., Arlington, VA 22202–3553. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing time-limited tolerances for residues of the fungicide metconazole in or on aspirated grain fractions at 1.00 parts per million (ppm); egg at 0.02 ppm; meat, fat and meat by-products of cattle, goat, hog, horse, poultry and sheep at 0.02 ppm; milk at 0.02 ppm; soybean, hulls at 1.20 ppm; soybean, meal at 0.25 ppm; soybean, refined oil at 1.20 ppm; and soybean, seed at 0.10 ppm. These tolerances will expire and be revoked on December 31, 2010. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR).

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of the section 408 safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Metconazole on Soybeans and FFDCA Tolerances

Australasian soybean rust (SBR) is a plant disease caused by two fungal species, *Phakopsora pachyrhizi* and *P. meibomiae*, and is spread primarily by windborne spores that can be transported over long distances. SBR models suggest that most of the soybean acreage in the United States could be compromised by an SBR epidemic. In accordance with the 2002 Agricultural Bioterrorism Protection Act, SBR was identified by the United States Department of Agriculture (USDA) as a select biological agent with the potential to pose a severe threat to the soybean industry and livestock production, in general. As such, USDA has invested in extensive readiness and outreach activities among soybean producers. The States of Minnesota and South Dakota petitioned EPA to allow under FIFRA section 18 the use of metconazole on soybeans for control of SBR in Minnesota and South Dakota. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of metconazole in or on aspirated grain fractions; egg; meat, fat and meat by-products of cattle, goat, hog, horse, poultry and sheep; milk; soybean, hulls; soybean, meal; soybean, refined oil; and soybean, seed. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although these tolerances will expire and be revoked on December 31, 2010, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on aspirated grain fractions; egg; meat, fat and meat by-products of cattle, goat, hog, horse, poultry and sheep; milk; soybean, hulls; soybean, meal; soybean, refined oil; and soybean, seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether metconazole meets EPA's registration requirements for use in soybeans or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of metconazole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for growers in any State other than those in which State lead agencies have obtained an exemption to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the

emergency exemption for metconazole, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of metconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for time-limited tolerances for residues of metconazole in or on aspirated grain fractions at 1.00 ppm; egg at 0.02 ppm; meat, fat and meat by-products of cattle, goat, hog, horse, poultry and sheep at 0.02 ppm; milk at 0.02 ppm; soybean, hulls at 1.20 ppm; soybean, meal at 0.25 ppm; soybean, refined oil at 1.20 ppm; and soybean, seed at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10x to account for interspecies differences and 10x for intraspecies differences.

For dietary risk assessment (other than cancer), the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10x to account for interspecies differences and 10x for intraspecies differences), the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for metconazole used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METCONAZOLE FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (U.S. general population including infants and children)	Not applicable	None	An endpoint of concern (effect) attributable to a single exposure (dose) for the U.S. general population was not identified in the oral toxicity studies reviewed.
Acute Dietary (Females 13-49 years of age)	NOAEL = 12.0 milligram/kilogram/day (mg/kg/day) UF = 100x Acute RfD = 0.12 mg/kg/day	FQPA SF = 1x aPAD = acute RfD ÷ FQPA SF = 0.12 mg/kg/day	Developmental toxicity—rat; LOAEL = 30.0 mg/kg/day based on increases in skeletal variations.
Chronic Dietary (All populations)	NOAEL= 4.3 mg/kg/day UF = 100x Chronic RfD = 0.04 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD ÷ FQPA SF = 0.04 mg/kg/day	Chronic oral toxicity - rat; LOAEL = 13.1 mg/kg/day based on increased liver weights and associated hepatocellular lipid vacuolation and centrilobular hypertrophy observed in males. Similar effects were observed in females at 54 mg/kg/day, plus increased spleen weight.
Short-Term Incidental Oral (1 to 30 days)	NOAEL = 9.1 mg/kg/day UF = 100x	LOC for MOE = 100	28-day oral toxicity - rat; LOAEL = 90.5 mg/kg/day based on decreased body weight gain in males, increased liver and kidney weight and hepatocellular hypertrophy and vacuolation in both sexes.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METCONAZOLE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-Term Incidental Oral(1 to 6 months)	NOAEL = 6.4 mg/kg/day UF =100 x	LOC for MOE = 100	90-day oral toxicity—rat; LOAEL = 19.2 mg/kg/day based on hepatic vacuolation in males and increased spleen weight in females.
Short-Term Dermal (1 to 30 days)	NOAEL = 9.1 mg/kg/day UF = 100x (dermal absorption rate = 5%)	LOC for MOE = 100	28-day oral toxicity—rat; LOAEL = 90.5 mg/kg/day based on decreased body weight gain in males, increased liver and kidney weight and hepatocellular hypertrophy and vacuolation in both sexes.
Intermediate-Term Dermal(1 to 6 months)	NOAEL = 6.4 mg/kg/day UF = 100x (dermal absorption rate = 5%)	LOC for MOE = 100	90-day oral toxicity—rat; LOAEL = 19.2 mg/kg/day based on hepatic vacuolation in males and increased spleen weight in females.
Long-Term Dermal (>6 months)	NOAEL= 4.3 mg/kg/day UF = 100x (dermal absorption rate = 5%)	LOC for MOE = 100	Chronic oral toxicity—rat; LOAEL = 13.1 mg/kg/day based on increased liver weights and associated hepatocellular lipid vacuolation and centrilobular hypertrophy observed in males. Similar effects were observed in females at 54 mg/kg/day, plus increased spleen weight.
Short-Term Inhalation (1 to 30 days)	NOAEL= 9.1 mg/kg/day UF = 100x (inhalation-absorption rate = 100% oral equivalent)	LOC for MOE = 100	28-day oral toxicity—rat; LOAEL = 90.5 mg/kg/day based on decreased body weight gain in males, increased liver and kidney weight and hepatocellular hypertrophy and vacuolation in both sexes.
Intermediate-Term Inhalation (1 to 6 months)	NOAEL= 6.4 mg/kg/day UF = 100x (inhalation-absorption rate = 100% oral equivalent)	LOC for MOE = 100	90-day oral toxicity—rat; LOAEL = 19.2 mg/kg/day based on hepatic vacuolation in males and increased spleen weight in females.
Long-Term Inhalation (>6 months)	NOAEL= 4.3 mg/kg/day UF = 100x (inhalation-absorption rate = 100% oral equivalent)	LOC for MOE = 100	Chronic oral toxicity—rat; LOAEL = 13.1 mg/kg/day based on increased liver weights and associated hepatocellular lipid vacuolation and centrilobular hypertrophy observed in males. Similar effects were observed in females at 54 mg/kg/day, plus increased spleen weight.
Cancer (oral, dermal, inhalation)	Metconazole has been classified as ''not likely to be carcinogenic in humans.'' As a result, a quantified carcinogenic assessment (Q* approach) is not required for metconazole.		

B. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Metconazole is not currently registered for any use in the United States. An import tolerance has been established for metconazole on bananas. Risk assessments were conducted by EPA to assess dietary exposures from metconazole in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The acute dietary exposure analysis for metconazole was conducted for the proposed food use and drinking water. Except for drinking water, the acute analysis is based on Tier 1 assumptions of the proposed/recommended tolerance-level residues and 100% crop treated (CT). A Tier 2 drinking water assessment for the proposed use in soybeans was performed using the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) model with index reservoir (IR) scenarios and percent cropped area (PCA) adjustment factors. Estimated concentrations of metconazole in drinking water (from use in soybeans) were incorporated directly into the acute dietary risk assessment.

ii. *Chronic exposure*. In conducting the chronic dietary risk assessment, the DEEM-FCID™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994-1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity.

The chronic dietary exposure analysis for metconazole was conducted for the proposed food use and drinking water. Except for drinking water, the chronic analysis is based on Tier 1 assumptions of the proposed/recommended tolerance-level residues and 100% CT. A Tier 2 drinking water assessment for the proposed use in soybeans was performed using PRZM/EXAMS model with IR scenarios and PCA adjustment

factors. As with the acute analysis, estimated concentrations of metconazole in drinking water (from use in soybeans) were incorporated directly into the chronic dietary risk assessment.

As a result, all acute and chronic dietary risk estimates were less than the Agency's LOC for the U.S. general population and all population subgroups (i.e., they are all less than 100% of the aPAD and cPAD).

iii. *Cancer*. Metconazole has been classified as ''not likely to be carcinogenic in humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range. As a result, a quantified carcinogenic assessment (Q* approach) is not required for metconazole.

2. *Dietary exposure from drinking water*. The Agency used the PRZM/EXAMS to calculate estimated drinking water concentrations (EDWCs) for the use of metconazole in soybeans, using the IR scenarios and PCA adjustment factors. Thus, the estimated exposure concentrations for water are based on the proposed highest use rate. Ground water concentrations were estimated with the Screening Concentration in Ground Water (SCI-GROW) model.

A Tier 2 drinking water assessment was conducted for the proposed use of metconazole in soybeans using the proposed maximum application rate of 0.07 lbs. a.i./acre with 2 applications per year and a 10- to 21-day RTI. The preharvest interval (PHI) will be 30 days. Based on PRZM/EXAMS, the EDWCs for metconazole in surface water are 1.57 parts per billion (ppb) and 0.48 ppb for acute and chronic (non-cancer) exposures, respectively. For chronic/cancer assessments, the 30-year annual average from PRZM/EXAMS is 0.34 ppb. The EDWC for both acute and chronic exposures is estimated as 0.04 ppb for ground water using the SCI-GROW model.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Metconazole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Metconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation). It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Metconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazole alanine and triazole acetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including metconazole, EPA conducted a human health risk assessment for exposure to 1,2 4-triazole, triazole alanine and triazole acetic acid resulting from the use of all current and pending uses of triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with the common metabolites (e.g., use of maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high-end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10x FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various population subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov*, Docket ID number EPA–HQ–OPP–2005–0497–0013.

C. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and/or post-natal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. Developmental studies in rats and rabbits show some evidence of developmental effects (skeletal variations, post-implantation loss, reduction in fetal body weight), but only at dose levels that are maternally toxic. In the developmental toxicity study in rats, skeletal variations (predominantly lumbar ribs) occurred in the presence of maternal toxicity (decreased body weight gains). In the pre-natal developmental toxicity study in rabbits, developmental effects (increased post-implantation loss and reduced fetal body weights) were observed at the same dose that caused maternal toxicity (decreased body weight gains, reduced food consumption and alterations in hematology parameters). In the 2-generation reproduction study in rats with cis metconazole, offspring toxicity (reduced fetal body weights in F_1 and F_2 offspring) were observed only at the highest tested dose which also resulted in evidence of parental toxicity (reduced parental body weight gains and increased ovarian weight). The chemical is non-genotoxic and not likely to be carcinogenic below a defined dose range based on bioassays in the rat and the mouse combined with a lack of *in vitro* or *in vivo* mutagenicity. Metconazole did not demonstrate the potential for neurotoxicity in the four species (mouse, rat, dog and rabbit) tested. NOAELs/LOAELs are well characterized and are used as endpoints for appropriate risk assessments.

There are adequate data in the metconazole toxicology database to characterize the potential for pre- and/or post-natal risks to infants and children: a 2-generation reproduction study in rats (cis-only isomer; one with

the cis/trans mixture has been completed and will be submitted in the near future); a developmental study in rats; and several developmental studies with rabbits. The effects seen in these studies do not suggest that pups are more susceptible: pup effects were only seen in the presence of maternal toxicity and, in general, were of comparable or less severity to the effects observed in adults. Thus, there are no residual uncertainties for pre- and/or post-natal exposure to metconazole and the Agency has determined that the special FQPA safety factor can be reduced to 1x.

3. *Reproductive toxicity study*. In the submitted 2-generation reproduction study in rats with cis metconazole, offspring toxicity (reduced fetal body weights in F1 and F2 offspring) was observed only at the highest tested dose, which also resulted in evidence of parental toxicity (reduced parental body weight gains and increased ovarian weight). As discussed in Unit IV.C.2., there are no residual uncertainties for pre- and/or post-natal exposure to metconazole.

4. *Pre-natal and post-natal sensitivity*. Please refer to the explanation provided in Unit IV.C.2. for a detailed discussion regarding ''pre- and/or post-natal sensitivity.''

5. *Conclusion*. The Agency evaluated the quality of the hazard and exposure database for metconazole to characterize its potential for pre- and/or post-natal risks to infants and children. The effects observed in the developmental and reproductive studies do not suggest that pups are more susceptible; pup effects were only seen in the presence of maternal toxicity and, in general, were of comparable or less severity to the effects observed in adults. Thus, based on the hazard and exposure data, the special FQPA SF is reduced to 1x as there are low concerns and no residual uncertainties with regard to pre- and/or post-natal toxicity.

D. Aggregate Risks and Determination of Safety

EPA conducted human health risk assessments for acute, chronic and cancer dietary exposures (food + drinking water only) for the proposed use. Because there are no uses of metconazole that are expected to result in residential exposures, this aggregate risk assessment takes into consideration dietary (food + drinking water) exposure only; therefore, the acute and chronic aggregate estimates would be the same as the dietary exposure results.

1. *Acute risk*. Using the exposure assumptions discussed in this unit, the acute dietary exposure from food and water to metconazole will occupy 1% of the aPAD for females 13–49 years old, the population subgroup of concern. Given the proposed use, the Agency has no risk concern for exposure to metconazole through food and/or drinking water. EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to metconazole from food and water will utilize 2% of the cPAD for the U.S. general population and 5% of the cPAD for children 1-2 years old. There are no residential uses for metconazole that will result in chronic residential exposure to metconazole. Given the proposed use, the Agency has no risk concern for exposure to metconazole through food and/or drinking water. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and drinking water (considered to be a background exposure level). Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and drinking water (considered to be a background exposure level). Since metconazole is not registered for use on any sites that would result in residential exposure, short- and intermediate-term aggregate risk assessments are not needed.

4. *Aggregate cancer risk for U.S. population*. Metconazole is ''not likely to be carcinogenic in humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range. A non-genotoxic mode of action for mouse liver tumors was established. No quantification is required.

5. *Determination of safety*. Based on all these considerations, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. general population and to infants and children from aggregate exposure to metconazole residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Road, Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No CODEX, Canadian or Mexican maximum residue limits (MRLs) or tolerances have been established for metconazole in or on soybeans. Further, no provisional MRL has been established in Japan for imported soybeans. Therefore, international harmonization is not an issue at this time.

VI. Conclusion

Therefore, time-limited tolerances are established for residues of metconazole in or on aspirated grain fractions at 1.00 ppm; egg at 0.02 ppm; meat, fat and meat by-products of cattle, goat, hog, horse, poultry and sheep at 0.02 ppm; milk at 0.02 ppm; soybean, hulls at 1.20 ppm; soybean, meal at 0.25 ppm; soybean, refined oil at 1.20 ppm; and soybean, seed at 0.10 ppm.

VII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175 requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 5, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.617 is amended by adding text and table to paragraph (b) to read as follows:

§ 180.617 Metconazole; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide metconazole, 5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazole-1-yl-methyl)cyclopentanol in or on aspirated grain fractions; egg; meat, fat and meat by-products of cattle, goat, hog, horse, poultry and sheep; milk; soybean, hulls; soybean, meal; soybean, refined oil; and soybean, seed in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and be revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Aspirated grain fractions	1.00	12/31/10
Cattle, fat	0.02	12/31/10
Cattle, meat	0.02	12/31/10
Cattle, meat byproducts	0.02	12/31/10
Egg	0.02	12/31/10
Goat, fat	0.02	12/31/10
Goat, meat	0.02	12/31/10
Goat, meat byproducts	0.02	12/31/10
Hog, fat	0.02	12/31/10
Hog, meat	0.02	12/31/10
Hog, meat byproducts	0.02	12/31/10
Horse, fat	0.02	12/31/10
Horse, meat	0.02	12/31/10
Horse, meat byproducts	0.02	12/31/10
Milk	0.02	12/31/10
Poultry, fat	0.02	12/31/10
Poultry, meat	0.02	12/31/10
Poulty, meat byproducts	0.02	12/31/10
Sheep, fat	0.02	12/31/10
Sheep, meat	0.02	12/31/10
Sheep, meat byproducts	0.02	12/31/10

Commodity	Parts per million	Expiration/revocation date
Soybean, hulls	1.20	12/31/10
Soybean, meal	0.25	12/31/10
Soybean, refined oil	1.20	12/31/10
Soybean, seed	0.10	12/31/10

* * * * *

[FR Doc. E6–21493 Filed 12–19–06; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0942; FRL–8105–4]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in this document. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective December 20, 2006. Objections and requests for hearings must be received on or before February 20, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0942. All documents in the docket are listed on the regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Pesticide/CFR section	Contact person
Acibenzolar-*S*-methyl, 180.561 Mancozeb, 180.176	Libby Pemberton *pemberton.libby@epa.gov* (703) 308–9364
Bifenthrin, 180.442 Thiophanate-methyl, 180.371	Andrea Conrath *conrath.andrea@epa.gov* (703) 308–9356
Flufenacet, 180.527 Propyzamide, 180.317	Andrew Ertman *ertman.andrew@epa.gov* (703) 308–9367
Zoxamide, 180.567	Stacey Groce *groce.stacey@epa.gov* (703) 305–2505

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action, if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the table under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by the Food Quality Protection Act of 1996 (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0942 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 20, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please

submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0942, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each pesticide listed in this document. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each pesticide. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Acibenzolar-S-methyl*. EPA has authorized under FIFRA section 18 the use of acibenzolar-*S*-methyl on onions for control of onion thrips, a vector of iris yellow spot virus in Colorado. This regulation extends time-limited tolerances for residues of acibenzolar-*S*-methyl (benzo(1,2,3)thiadiazole-7-carbothioic acid-*S*-methyl ester) in or on onion, dry bulb and onion, green at 0.05 parts per million (ppm) for an additional 2½–year period. These tolerances will expire and are revoked on December 31, 2009. Time-limited tolerances were originally published in the **Federal Register** of February 16, 2005 (70 FR 7854) (FRL–7697–8).

2. *Bifenthrin*. EPA has authorized under FIFRA section 18 the use of bifenthrin on orchardgrass for control of the orchardgrass billbug in Oregon. This regulation extends time-limited tolerances for residues of the insecticide bifenthrin in or on orchardgrass, forage and orchardgrass, hay at 0.05 ppm for an additional 2½–year period. These tolerances will expire and are revoked on December 31, 2009. Time-limited tolerances were originally published in the **Federal Register** of July 26, 2002 (67 FR 48790) (FRL–7187–8).

3. *Flufenacet*. EPA has authorized under FIFRA section 18 the use of flufenacet on winter wheat for control of Italian ryegrass in Idaho, Oregon, and Washington. This regulation extends time-limited tolerances for combined residues of the herbicide *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites (containing the 4-fluoro-*N*-methylethyl benzenamine) in or on wheat, grain at 1 ppm; wheat, forage at 10 ppm; wheat, hay at 2 ppm; wheat, straw at 0.50 ppm; meat, kidney at 0.50 ppm; fat of cattle, goat, horse, hog, and sheep at 0.05 ppm; and meat byproducts (other than kidney) of cattle, goat, horse, hog, and sheep at 0.10 ppm for an additional 2½–year period. These tolerances will expire and are revoked on December 31, 2009. Time-limited tolerances were originally published in the **Federal Register** of August 6, 1999 (64 FR 42839) (FRL–6091–9).

4. *Mancozeb*. EPA has authorized under FIFRA section 18 the use of mancozeb on ginseng for control of stem and leaf blight in Michigan and Wisconsin. This regulation extends a time-limited tolerance for combined residues of the fungicide mancozeb (calculated as zinc ethylenebisdithiocarbamate and its metabolite, ethylenethiourea (ETU)), in or on ginseng, root at 2.0 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of October 9, 1998 (63 FR 54362) (FRL–6029–5).

5. *Propyzamide*. EPA has authorized under FIFRA section 18 the use of propyzamide on cranberries for control of dodder in Massachusetts, New Jersey, and Rhode Island. This regulation extends a time-limited tolerance for combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety and calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) in or on cranberry at 0.05 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of September 16, 1998 (63 FR 49479) (FRL–6022–5).

6. *Thiophanate-methyl*. EPA has authorized under FIFRA section 18 the use of thiophanate-methyl on blueberry for control of various fungal diseases in a number of States, including Connecticut, Indiana, Michigan, New Jersey, New York, Ohio, and Pennsylvania. This regulation extends a time-limited tolerance for combined residues of the fungicide thiophanate-methyl and its metabolite, methyl 2-benzimidazoyl carbamate (MBC), in or on blueberry at 1.5 ppm for an

additional 2½–year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of September 12, 2002 (67 FR 57748) (FRL–7196–5).

7. *Thiophanate-methyl*. EPA has authorized under FIFRA section 18 the use of thiophanate-methyl on citrus for control of post-bloom fruit drop in Florida and Louisiana. This regulation extends a time-limited tolerance for combined residues of the fungicide thiophanate-methyl and its metabolite, MBC, in or on citrus at 0.5 ppm for an additional 2½–year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of September 12, 2002 (67 FR 57748) (FRL–7196–5).

8. *Zoxamide*. EPA has authorized under FIFRA section 18 the use of zoxamide on ginseng for control of phytophthora blight in Michigan and Wisconsin. This regulation extends a time-limited tolerance for residues of the fungicide zoxamide (3,5-dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methylbenzamide) in or on ginseng at 0.06 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of March 31, 2004 (69 FR 16800) (FRL–7349–3).

III. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under section 408(l)(6) of FFDCA in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132, requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 6, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.176 [Amended]

■ 2. In § 180.176, in the table to paragraph (b), amend the entry ginseng, root by removing the expiration date ''12/31/06'' and adding in its place ''12/31/09.''

§ 180.317 [Amended]

■ 3. In § 180.317, in the table to paragraph (b), amend the entry

cranberry by removing the expiration date ''12/31/06'' and adding in its place ''12/31/09.''

§ 180.371 [Amended]

■ 4. In § 180.371, in the table to paragraph (b), amend the entries blueberry and citrus by removing the expiration date ''6/30/07'' and adding in its place ''12/31/09.''

§ 180.442 [Amended]

■ 5. In § 180.442, in the table to paragraph (b), amend the entries orchardgrass, forage and orchardgrass, hay by removing the expiration date ''6/30/07'' and adding in its place ''12/31/09.''

§ 180.527 [Amended]

■ 6. In § 180.527, in the table to paragraph (b), amend the entries cattle, fat; cattle, kidney; cattle, meat; cattle, meat byproducts; goat, fat; goat, kidney; goat, meat; goat, meat byproducts; hog, fat; hog, kidney; hog, meat; hog, meat byproducts; horse, fat; horse, kidney; horse, meat; horse, meat byproducts; sheep, fat; sheep, kidney; sheep, meat; sheep, meat byproducts; wheat, forage; wheat, grain; wheat, hay; and wheat, straw by removing the expiration date ''6/30/07'' and adding in its place ''12/31/09.''

§ 180.561 [Amended]

■ 7. In § 180.561, in the table to paragraph (b), amend the entries onion, dry bulb and onion, green by removing the expiration date ''6/30/07'' and adding in its place ''12/31/09.''

§ 180.567 [Amended]

■ 8. In § 180.567, in the table to paragraph (b), amend the entry ginseng by removing the expiration date ''12/31/06'' and adding in its place ''12/31/09.''

[FR Doc. E6–21506 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0536; FRL–8107–7]

Fluroxypyr; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of fluroxypyr in or on onion, bulb; garlic, bulb; and shallot, bulb. The Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective December 20, 2006. Objections and requests for hearings must be received on or before February 20, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0536. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov.*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–3194; e-mail address: *brothers.shaja@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of This Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov.*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.* You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify Docket ID number EPA–HQ–OPP–2005–0536 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 20, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES.** Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by Docket ID number EPA–HQ–OPP–2005–0536, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 21, 2006 (71 FR 20661) (FRL–8065–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6775) by IR–4, 500 College Road East, Suite 201 West, Princeton, NJ 08540. The petition requested that 40 CFR 180.535 be amended by establishing tolerances for combined residues of the herbicide fluroxypyr, 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid], in or on garlic and shallot (bulb), and onion (dry bulb) at 0.03 parts per million (ppm). The notice included a summary of the petition prepared by Dow AgroSciences, the registrant. Comments on the notice of filing were received from one private citizen. EPA's response to these comments is discussed in Unit IV.C.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in 4 residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA–PEST/1997/November/Day-26/p30948.htm.*

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of fluroxypyr on onion, bulb; garlic, bulb; and shallot, bulb at 0.03 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by fluroxypyr as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov.* Docket ID number EPA–HQ–OPP–2005–0536, Fluroxypyr Field Corn Human Health Risk Assessment, pages 12–15.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty, factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm.*

A summary of the toxicological endpoints for fluroxypyr used for human risk assessment can be found at *www.regulations.gov.* Docket ID number EPA–HQ–OPP–2005–0536, Fluroxypyr Field Corn Human Health Risk Assessment, page 13; and Fluroxypyr Dry Bulb Onion Human Health Risk Assessment, pages 17–18.

C. Exposure Assessment

1. Dietary exposure from food and feed uses. Tolerances have been established (40 CFR 180.535) for the combined residues of fluroxypyr, in or on the following raw agricultural commodities: Barley, corn, grain, oat, sorghum, and wheat. Tolerances are also established for cattle, goat, hog, horse, sheep, and milk. Additionally, time limited tolerances are established in 40 CFR 180.535(b) in or on corn and onion. Risk assessments were conducted by EPA to assess dietary exposures from fluroxypyr in food as follow:

i. *Acute exposure.* There were no toxic effects attributable to a single dose. An endpoint of concern was not identified to quantitate an acute-dietary risk to the U.S. general population or to the subpopulation females 13–50 years old. Therefore, an acute aggregate exposure assessment was not performed.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII); and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessment: An unrefined, Tier 1 chronic dietary-exposure assessment was conducted for all supported fluroxypyr food uses. In this assessment, tolerance level residues

and 100% crop treated (CT) was assumed for all crops included in the analysis. The assumptions result in highly conservative dietary exposure estimates.

iii. *Cancer.* A cancer dietary assessment was not conducted since fluroxypyr has been classified as ''not likely'' to be carcinogenic.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fluroxypyr in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fluroxypyr. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/index.htm*.

Refined (Tier II) surface water concentrations were developed for fluroxypyr with the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) model, using an index reservoir scenario for the aerial application of fluroxypyr on rangeland and permanent grass pastures. The model assumes that fluroxypyr is applied at the maximum label rate (0.5 lb ae/acre). The estimated annual average environmental concentration of fluroxypyr in surface water is 3.3 parts per billion (ppb).

For the ground water estimated concentration, the Tier I Screening Concentration in Ground Water (SCI–GROW) model predicts that fluroxypyr will be found at relatively small concentrations when the herbicide is applied at the maximum recommended application rate of 0.5 lbs ae/acre. The estimate is 0.042 ppb (0.042 µg/L). This conservative estimate is a default value generated by the SCI–GROW model.

Based on the PRZM/EXAMS and SCI–GROW models, the estimated environmental concentrations (EECs) of fluroxypyr for surface water are estimated to be 3.3 ppb, and 0.04 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM–FCID™). For chronic dietary risk assessment, the annual average concentration of 3.3 ppb was used to access the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluroxypyr (Vista™) is registered for application to residential turfgrass and recreational sites such as golf courses, parks, and sports fields. The proposed label does not prohibit homeowners from mixing/loading/applying Vista™.

Residential handlers may receive short-term dermal and inhalation exposure to fluroxypyr when mixing, loading and applying the formulations. Adults and children may be exposed to fluroxypyr residues from dermal contact with turf during post-application activities. Toddlers may also receive short and intermediate-term oral exposure from incidental ingestion during post-application activities.

In conducting the short and intermediate-term aggregate risk assessments, the Agency made the following conservative assumptions.

- Incidental oral and inhalation exposures for the aggregate residential handler scenario included children and adults (U.S. population subgroup).
- Incidental oral exposure from treated areas included infants and children (up to age 12) for the aggregate post-application scenario.
- Inhalation exposure resulting from residential application included youth (age 13–19 years old), and the adult population subgroups.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluroxypyr and any other substances and fluroxypyr does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fluroxypyr has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There was no evidence (quantitative/qualitative) of increased susceptibility following in utero exposure to the acid and the ester in rats and rabbits, or following prenatal and/or postnatal exposure to the acid form in rats.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

- The toxicity database for fluroxypyr is complete.
- There was no evidence of neurotoxicity or neuropathology in the available studies.
- There was no evidence (quantitative/qualitative) of increased susceptibility following pre and/or postnatal exposure.
- The chronic dietary food exposure assessment utilizes tolerance level residue estimates and assumes 100% CT for all commodities. This assessment is not likely to underestimate exposure/risk.
- The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

• The residential exposure assessment was conducted using standard assumptions based on carefully reviewed data.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* There were no toxic effects attributable to a single dose. An endpoint of concern was not identified for any population subgroup. Therefore, fluroxypyr is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fluroxypyr from food and water will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for all infants <1 year old, and 1.4% of the cPAD for children 1–2 years old. Based on the use pattern, chronic residential exposure to residues of fluroxypyr is not expected.

3. *Short and intermediate-term risk.* Short and intermediate-term aggregate exposures are likely to result from exposure to fluroxypyr residues from food, drinking water, and residential pesticide uses. High-end estimates are used for residential exposure, while average values are used for food and drinking water. Short and intermediate-term risk assessments are required for adults (residential handler inhalation exposure scenario), in addition to infants and children (residential post-application oral exposure scenario).

Using the exposure assumptions described for non-dietary short and intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs from 4,400 to 54,000 (adults 50+ years old). The MOEs are 8,300 and 4,400 for the U.S. population, and children 1–2 years old (the most highly exposed subgroup), respectively.

4. *Aggregate cancer risk for U.S. population.* Fluroxypyr has been classified as ''not likely'' to be carcinogenic. Therefore, fluroxypyr is not expected to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fluroxypyr residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The gas chromatography/mass-selective detector (GC/MSD) analytical method used to determine residues of fluroxypyr in both the acid and methylheptyl ester forms is adequate to recover residues of fluroxypyr and fluroxypyr 1–MHE in dry bulb onions. The method converts the methylheptyl ester form of fluroxypyr to the acid and results are reported as the acid equivalent. The lower limit of method validation (LLMV) for bulb onions was 0.01 ppm. Further, the method is an adaptation of a Dow AgroSciencesmethod GRM 96.02, which has been adequately validated as an enforcement method; therefore the Agency considers the modified method to be adequate to enforce the requested tolerance.

Adequate enforcement methodology (GC/MSD) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are currently no Codex, Canadian, or Mexican maximum residue limits for fluroxypyr or its metabolites in/on dry bulb onions.

C. Response to Comments

A private citizen of Florham Park, New Jersey submitted public comments on the fluroxypyr notice of filing. The private citizen commented on the cancer finding classification ''not likely a carcinogen,'' and views the statement deceptive.

EPA's response: The cancer classification ''Not Likely to be Carcinogenic to Humans'' comes from EPA's Guidelines for Carcinogen Risk Assessment. These Guidelines recommend this descriptor when the available data are considered robust for deciding that there is no basis for human hazard concern. These Guidelines were developed as part of an Agency-wide guidelines development program by a Technical Panel of the U.S. EPA's Risk Assessment Forum, which was composed of scientists from throughout the Agency. Selected drafts were peer reviewed internally by the U.S. EPA's Science Advisory Board, and by experts from universities, environmental groups, industry and other governmental agencies. The Guidelines were also subjected to several public comment periods. For additional information regarding EPA's Guidelines for Carcinogen Risk and recommended descriptor language please refer to the **Federal Register** of April 7, 2005 (70 FR 17765) (FRL–7896–1) (*http://www.epa.gov/fedrgstr/EPA-TOX/2005/April/Day-07/t6642.htm].*

The private citizen also commented on profiteers utilizing the Agency to promote poor products to the American citizens.

EPA's response: This comment is not germane to EPA's statutory basis for acting on fluroxypyr tolerance petition. Thus, a technical response to this comment is not required. The private citizen's comments contained no scientific data or other substantive evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to fluroxypyr from the establishment of these tolerances.

V. Conclusion

Therefore, the tolerances are established for combined residues of fluroxypyr, 1-methylheptyl ester [1-methylheptyl] ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid], in or on onion, bulb; garlic, bulb; and shallot, bulb at 0.03 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary

consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Goverument and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping, requirements.

Dated: December 12, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.535 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.535 Fluroxypyr 1-methylheptyl ester; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Garlic, bulb	0.03
* * * * *	
Onion, bulb	0.03
Shallot, bulb	0.03
* * * * *	

* * * * *

[FR Doc. 06–9765 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA–HQ–OPPT–2006–0981; FRL–8109–9]

RIN 2070–AC61

2006 Reporting Notice and Amendment; Partial Updating of TSCA Inventory Database; Chemical Substance Production, Processing, and Use Site Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Amendment; Notice of submission period extension.

SUMMARY: EPA is amending the Toxic Substances Control Act (TSCA) Inventory Update Reporting (IUR) regulations by extending the submission deadline for 2006 reports from December 23, 2006 to March 23, 2007. This is a one-time extension for the 2006 submission period only. The IUR requires manufacturers and importers of certain chemical substances included on the TSCA Chemical Substance Inventory to report current data on the manufacturing, processing, and use of the substances.

DATES: This final rule is effective December 20, 2006. The 2006 IUR submission period is extended to run from December 23, 2006 to March 23, 2007.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0981. All documents in the docket are listed on the regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. The EPA Docket Center (EPA/DC) suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Rm. 3334) in the EPA West Bldg., located at 1301 Constitution Ave., NW., Washington,

DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA website at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Susan Sharkey, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8789; e-mail address: *sharkey.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

You may be potentially affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) chemical substances, including inorganic chemical substances, subject to reporting under IUR regulations at 40 CFR part 710. Any use of the term ''manufacture'' in this document will encompass import, unless otherwise stated.

Potentially affected entities may include, but are not limited to: Chemical manufacturers and importers subject to IUR reporting, including chemical manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

EPA is issuing this amendment to extend the 2006 submission period for IUR reporting until March 23, 2007. The December 19, 2005, Inventory Update Reporting Revisions Final Rule designated the IUR submission period to be August 25, 2006 to December 23, 2006. A subsequent **Federal Register** document was published on September 11, 2006 (71 FR 53335) (FRL–8088–5), again providing notice of the need to report and reiterating the August 25 to December 23, 2006, submission period. The Agency is taking this action in response to concerns raised by the regulated community about their ability to submit the required information within the prescribed period. Written requests to extend the IUR submission period are included in the docket (see **ADDRESSES**). The compelling concerns raised by industry include the timing of guidance finalization, issues associated with the reporting software, and issues associated with first-time reporting for inorganic chemical substances.

1. *Guidance documents*. The guidance documents available to the regulated community prior to the submission period were draft final documents, which EPA did not finalize until about 2 months after the beginning of the submission period.

2. *Reporting software*. The Agency provided reporting software for the regulated community to use to complete the IUR reporting form. Some members of the regulated community have had difficulty with the reporting software, resulting in the need to recompile their information and spend significant time troubleshooting their systems.

3. *First-time reporting for inorganic chemical substances*. Members of the regulated community associated with the manufacturing (including importing) of inorganic chemical substances have many new and/or complex questions concerning the reportability and chemical identification of inorganic substances. EPA agrees that there are many aspects of manufacturing inorganic chemical substances that are quite different from those that exist in the realm of organic chemical substances, which had comprised the previous IUR reporting. Concerns were raised about the length of time needed to determine the answers to these complex questions.

EPA believes it is appropriate to extend the reporting period to allow the reporters associated with inorganic chemical substances to determine their reporting obligations and to allow the regulated community to adjust to the new software and submit their reports.

B. What is the Agency's Authority for Taking this Action?

The IUR rule is issued pursuant to the authority of section 8(a) of TSCA, 15 U.S.C. 2607(a). The regulations for this rule are located at 40 CFR part 710, subpart C. In the **Federal Register** of January 7, 2003 (68 FR 848) (FRL–6767–4), EPA promulgated extensive amendments to the IUR regulation (2003 Amendments) to collect exposure-related information associated with the manufacturing, processing, and use of eligible chemical substances and to make certain other changes.

Under section 553(b)(3)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), the Agency may issue a final rule without a prior proposal if it finds that notice and public participatory procedures are impracticable, unnecessary, or contrary to the public interest. In this case, for the extension sought, the Agency does find that normal notice and public process rulemaking is unnecessary.

The Agency believes that this one-time extension is not of significant impact to the public. This action does not alter the substantive IUR reporting requirements in any way. The Agency also believes the one-time extension will not result in a significant delay in the processing and availability of IUR information to potential users. Further, this action is consistent with the public interest because it is designed to facilitate compliance with the IUR rule and to ensure that the 2006 collection includes accurate data on chemical manufacturing, processing, and use in the United States. Finally, any impact on the regulated community is expected to be beneficial given that the one-time extension provides additional time to submit IUR reports to EPA.

Similarly, under section 553(d) of the APA, 5 U.S.C. 553(d), the Agency may make a rule immediately effective ''for good cause found and published with the rule.'' For the reasons discussed in this unit, EPA believes that there is ''good cause'' to make this amendment effective upon publication in the **Federal Register**.

III. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is classified as a final rule because it makes an amendment to the Code of Federal Regulations (CFR). The amendment to the CFR is necessary to allow for a one-time extension to the 2006 reporting IUR period. This action does not impose any new requirements or amend substantive requirements. This action is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*.

C. Regulatory Flexibility Act

Because this action does not impose any new requirements or amend the substantive requirements, EPA certifies this action will not have a significant economic impact on a substantial number of small entities and there will be no adverse impact on small entities resulting from this action under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.)

D. Unfunded Mandates Reform Act

This action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not alter the relationships or distribution of power and responsibilities established by Congress.

F. Executive Order 13175

The Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 22951, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

This action does not require OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

H. Executive Order 13211

Because this final rule is exempt from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

I. National Technology Transfer Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

J. Executive Order 12898

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Inventory Update Reporting, IUR, Reporting and recordkeeping requirements, TSCA.

Dated: December 15, 2006.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. In § 710.53, revise the second sentence to read as follows:

§ 710.53 When to report.

* * * The first submission period is from August 25, 2006 to March 23, 2007.* * *

[FR Doc. E6–21711 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that

each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Essex County, New Jersey and Incorporated Areas Docket No.: FEMA–B–7458			
Bear Brook	At Confluence with Canoe Brook	+223	Township of Livingston.
	Approximately 1800 feet upstream of East Cedar Street	+367	
Canoe Brook	Approximately 1500 feet downstream of S. Orange Avenue	+202	Township of Livingston.
	At Confluence of Bear Brook	+223	
Canoe Brook Tributary No. 1	At Confluence with Canoe Brook	+204	Township of Livingston.
	Approximately 1100 feet upstream of White Oak Ridge Road	+254	Township of Milburn.
Crystal Lake Branch	At Confluence with West Branch of Rahway River	+372	Township of West Orange.
	Approximately 200 feet upstream of Clarken Drive	+498	
Peckman River	Approximately 1300 feet upstream of Erie Railroad	+180	Township of Cedar Grove, Township of Verona, Township of West Orange.
	Approximately 250 feet downstream of Highway 577	+474	
East Branch Rahway River	Approximately 200 feet upstream of Millburn Avenue	+99	City of Orange, Village of South Orange, Township of Maplewood.
	Just downstream of Forest Street	+167	
West Branch Rahway River	Approximately 400 feet downstream of Orange Reservoir Dam.	+298	Township of West Orange.
	At Garfield Avenue	+374	
Slough Brook	Just Downstream of Parsonage Hill Road	+177	Township of Livingston.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	At Irving Avenue	+280	

Depth in feet above ground.
*National Geodetic Vertical Datum.
+North American Vertical Datum.

ADDRESSES

Township of Cedar Grove

Maps are available for inspection at the following locations: Municipal Building, 525 Pompton Avenue, Cedar Grove, NJ 07009.

Township of Livingston

Maps are available for inspection at the following locations: Town Hall, 357 South Livingston Avenue, Livingston, NJ 07039.

Township of Maplewood

Maps are available for inspection at the following locations: Town Hall, 570 Valley Street, Maplewood, NJ 07040.

Township of Millburn

Maps are available for inspection at the following locations: Town Hall, 375 Millburn Avenue, Millburn, NJ 07041.

City of Orange

Maps are available for inspection at the following locations: City Hall, 29 North Day Street, Orange, NJ 07050.

South Orange Village

Maps are available for inspection at the following locations: South Orange Village Hall, 101 South Orange Avenue, South Orange, NJ 07079.

Township of Verona

Maps are available for inspection at the following locations: Town Hall, 600 Bloomfield Avenue, Verona, NJ 07044.

Township of West Orange

Maps are available for inspection at the following locations: Town Hall, 66 Main Street, West Orange, NJ 07052.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 13, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–21680 Filed 12–19–06; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MB Docket No. 05–210; FCC 06–163]

Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: In this document, the Commission adopted a number of procedures and procedural changes designed to streamline the process of allocating new FM channels and modifying the communities of license of existing radio stations, and to reduce current backlogs in proceedings to amend the FM Table of Allotments. In the R&O, the Commission also announced that it would lift a freeze on all new petitions to amend the FM Table

of Allotments, as of the effective date of the R&O.

DATES: Effective January 19, 2007.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418–2700 or *Peter.Doyle@fcc.gov*; Thomas Nessinger, Attorney-Advisor, Media Bureau, Audio Division, (202) 418–2700 or *Thomas.Nessinger@fcc.gov*.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act of 1995 Analysis

The Report and Order (''R&O'') contains new and modified information collection requirements, which were proposed in the NPRM and are subject to the Paperwork Reduction Act of 1995 (''PRA'').[1] These information collection requirements were submitted on July 19, 2005, to the Office of Management and Budget (''OMB'') for review under Section 3507(d) of the PRA. In addition, the general public and other Federal agencies were invited to comment on these information collection requirements in the NPRM. The Commission further notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission received no comments concerning these information collection requirements. On September 15, 2005, the Commission obtained OMB approval for these information collection requirements, encompassed by OMB Control No. 3060–0027. This R&O adopts the information collection requirements, as proposed.

Because, as detailed in the R&O, the Commission extends its new community of license minor modification procedures to FM NCE licensees and permittees, FCC Form 340 must be modified to accommodate the new information collection requirements of those procedures. The procedural requirements for FM NCE applicants for change of community of license will become effective after approval by OMB. The Commission published a separate **Federal Register** Notice seeking public comment on this new information collection requirement on November 22, 2006 (*see* 71 FR 67581 (November 22, 2006)). Upon OMB approval, the Commission will issue a public notice announcing the effective date of this rule.

This is a synopsis of the Commission's Report and Order (R&O), FCC 06–163, adopted November 3, 2006, and released November 29, 2006. The full text of the R&O is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com*, or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via e-mail at *Brian.Millin@fcc.gov*.

Synopsis of Order

1. With this Report and Order (''R&O''), the Commission makes certain changes to its procedures for allotting and assigning channels, classes, and communities of license for AM and FM broadcast stations, as proposed in the original Notice of Proposed Rule Making (''NPRM'') in this proceeding. *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Notice of Proposed Rule Making*, 20 FCC Rcd 11169 (2005). Specifically, the Commission makes changes of community of license for commercial full-power AM standard band and commercial and noncommercial educational (''NCE'') full-power FM broadcast stations a minor modification, to be accomplished by first come-first served minor modification application, subject to certain procedural requirements described below. To accommodate this change, the FM Table of Allotments, 47 CFR 73.202, shall henceforth contain only vacant allotments, and authorized full-power non-reserved band FM facilities already occupying allotments shall be listed only in the Media Bureau's Consolidated Data Base System (''CDBS''). As it does now, CDBS shall reflect the authorizations granted to those broadcasters operating on the listed channels and communities, and which are entitled to protection under our current rules. The Commission further adopts the proposal that it require allocations proponents simultaneously to file Form 301 applications with their allocations proposals, to submit the designated Form 301 filing fee, and to certify on Form 301 that they intend to apply to participate in auction bidding for the allotment should their proposal be adopted. The Commission also adopts the proposal to modify its rules to allow electronic filing of allocations documents. The Commission also lifts the current freeze on the filing of new petitions to amend the FM Table of Allotments, as of the effective date of the R&O. At this time, however, the Commission does not adopt the proposal to limit the number of proposals to add additional allotments or modify vacant allotments within a single rule making proposal, although it delegates to staff the discretion to return unreasonably large proposals or counter-proposals, if warranted. The Commission also declines to change its policy disfavoring the removal of a community's sole local transmission service to become another community's first local service, instead reiterating the need for parties contemplating such moves to seek waiver of the policy using existing law, and to demonstrate clearly the public interest benefits of such moves that would outweigh application of the policy in particular cases.

2. The Commission adopts the proposal to allow AM and FM full-power stations to change community of license by first come-first served minor modification application. Most commenters favored this proposal, and some opponents would mute their objections if the Commission adopted certain procedural safeguards. As the Commission tentatively concluded in the NPRM, and upon examination of the record in this proceeding, the Commission finds that the public interest would be served by streamlining current city of license modification procedures and employing certain safeguards to ensure that Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. 307(b)) (''Section 307(b)'') and other concerns are accommodated. The Commission also concludes that, given the maturity of the FM service, there is no need to continue utilizing rule making procedures to modify FM stations' communities of license merely because such procedures provide an opportunity to counter-propose allotments. The use of first come-first served procedures is consistent with the doctrine enunciated in *Ashbacker* v. *U.S.*, 326 U.S. 327 (1945), and the Commission believes

[1] The Paperwork Reduction Act of 1995 (''PRA''), Pub. L. 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

that there have been ample opportunities for potential counter-proponents to propose new FM station allotments during the 43 years that the Commission has relied on the current Table of Allotments. Further, all parties will continue to have reasonable opportunities to make such proposals. Moreover, to the extent that commenters object to the lack of opportunity to file competing applications, because the Commission proposes to limit such applications to those mutually exclusive with the applicant's existing facilities, foreclosing competing applications does not, as a practical matter, deprive potential applicants of opportunities for comparative consideration. Finally, the Commission is convinced that adopting the proposed new procedure will preserve limited agency resources, reduce the time needed to process community of license changes and, accordingly, expedite the provision of enhanced broadcast service to the public.

3. Community of license changes for commercial and NCE full-power AM standard band and FM broadcast licensees may be filed as minor modification applications. These minor modification applications processed on a first come-first served basis will be limited to those applications where the proposed daytime facilities are mutually exclusive with the applicant's existing daytime facilities. Related minor change applications must be submitted concurrently, and will be subject to the requirements and restrictions that apply to contingent minor modification application filings. *See* 47 CFR 73.3517(e). Required reference coordinate changes (which are not set out in the Table of Allotments) will not count against the current limit of four contingent minor modification applications that may be filed simultaneously. Parties seeking to employ this procedure must file, with their applications, a detailed exhibit demonstrating that the proposed change constitutes a preferential arrangement of allotments under Section 307(b) of the Act as compared to the existing allotment(s). The Commission will require a narrative showing that the proposed community of license change represents a net service benefit, under the Section 307(b) priorities and policies used since 1982. *See Revision of FM Assignment Polices and Procedures*, 90 FCC 2d 88 (1982). Applicants also will be required to confirm the community status of the proposed new community of license, demonstrating that it constitutes a community suitable for allotment purposes. Between our body of Section 307(b) precedent and the procedural safeguards discussed herein, these procedures will ensure that grant of such applications comports with the Commission's statutory mission under Section 307(b) to distribute radio service fairly, efficiently, and equitably. Additionally, as noted in the NPRM, our minimum distance separation standards and spectrum congestion will limit substantial urban migration. The new procedure will also address the concerns that led the Commission in 1999 to decline to treat such applications as minor changes as well as most commenters' Section 307(b) concerns. *See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, First Report and Order, 14 FCC Rcd 5272, 5278 (1999).

4. The Commission adopts certain additional safeguards to ensure that the public interest is served by the new procedures introduced herein. In performing Section 307(b) analyses under the new procedures adopted herein, the Commission will carefully consider whether an application would promote the fair, efficient, and equitable distribution of radio service. Under this analysis, a new permittee that obtained its permit after being awarded a dispositive Section 307(b) preference in an AM auction filing window should not be allowed to change communities prior to the commencement of broadcast operations in the originally authorized community unless the new community would compare equally or more favorably to the communities specified by the other mutually exclusive applicants in the auction Section 307(b) analysis. For example, an AM auction applicant that received a Priority (3) preference by proposing first local service to a larger community than that specified in a competing applicant's first local service proposal could not seek to modify the initial construction permit by later specifying a community with a smaller population than the competitor's proposed community. Otherwise, AM auction applicants could initially select their communities solely on the basis of providing the greatest Section 307(b) advantage and avoiding an auction, without actually serving those communities. Likewise, the Commission will not award rapid, successive community changes that sidestep the mutual exclusivity requirement of the new procedure. Accordingly, any application proposing a community of license change filed by a permittee that has not built its current permitted facilities and that is not mutually exclusive with either the applicant's built and operating facilities or its original allotment shall be returned as unacceptable for filing. The analysis set forth in *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988), will be carefully applied in considering Section 307(b) showings submitted in support of first come-first served applications to change communities of license, and that a first local service preference will not be awarded to a community that is largely interdependent with the Urbanized Area or surrounding communities. The Commission declines to adopt a service floor requirement such as that suggested in the NPRM, believing that existing Section 307(b) priorities and policies are sufficient to safeguard existing service. The Commission finds that existing procedural requirements, along with local public notice requirements (*see* 47 CFR 73.3580(c)(3), (d)(3), and (f)), will provide reasonable notice and opportunity for interested parties to comment under the new procedures introduced in the R&O. Broadcasters and members of the public may participate in the process of evaluating the grantability of a minor modification application to change community of license by filing informal objections. Arguments, evidence, and precedent may be presented in an informal objection as readily as in a more formal petition to deny, and are subject to the same evidentiary and legal standards. Moreover, the statutory right to file a petition for reconsideration, enumerated in Section 405 of the Communications Act of 1934, as amended (47 U.S.C. 405), provides a safety net for both relevant public interest considerations and participation by interested parties. Further, with regard to notice of applications, such minor modification applications will be listed in the Media Bureau's CDBS-generated ''Broadcast Applications'' public notices, much as AM major change applications are listed now. Due to the importance of local broadcast service to communities, however, the Commission believes it is vital that residents are provided adequate notice to enable them to file informal objections to, or comments in support of, a particular move. Thus, the Commission adopts its proposal to require the proponent to give local public notice in connection with such applications, notwithstanding that minor modification applicants generally need not provide local public notice. *See* 47 CFR 73.3580(a). Specifically, applicants under this new procedure

shall provide local public notice as set forth in Sections 73.3580(c)(3), (d)(3), and (f) of the Commission's rules (47 CFR 73.3580(c)(3), (d)(3), and (f)), and shall certify such compliance in Form 301. The Media Bureau shall also provide notice in the **Federal Register** that an application to modify an AM or FM station's community of license has been filed. Moreover, the Bureau will not act upon such an application until at least 60 days after publication in the **Federal Register**. The combination of local public notice under 47 CFR 73.3580, publication in the **Federal Register**, and the 60-day prohibition on Commission action will provide interested parties with ample notice and opportunity to comment on proposed community of license changes under our new procedures. Applicants themselves need only comply with the local public notice procedures, which are well known to licensees and permittees. The newspaper publication requirements of 47 CFR 73.3580(c)(3) will require the applicant to publish both in the current community of license and the proposed community, so as to give maximum notice to all residents potentially affected by grant of the application.

5. This new procedure will apply both to commercial full-service broadcast stations and also to full-power NCE stations. NCE FM allotments in the reserved band are not included in the Table of Allotments (see 47 CFR 73.201, 73.202(a), and 73.501(a)), and as non-tabled facilities such licensees must undergo a process similar to that undergone by AM licensees if they wish to change their communities of license, in that they must wait for an NCE filing window before applying to change communities. However, while reserved band NCE FM stations are non-tabled, the reserved band resembles the non-reserved FM band in most other respects, including maturity of the service, application of spacing rules, and spectrum congestion near larger cities. Because of these similarities, the Commission finds that the rationales for adopting the new procedure, such as streamlining of the current two-step process and maturity of the FM service, apply equally to NCE stations, and thus the new procedure will apply to NCE stations. However, the new procedures will not apply to expanded band AM stations, as allowing community of license changes by minor modification application for such stations could jeopardize the Commission's ability to develop a comprehensive plan for additional expanded band AM licensing.

6. There are currently fewer than 25 pending community change rule making proceedings for which a *Report and Order* has not been released. These parties will not be required to dismiss their rule making petitions and refile their proposals in the form of an application. However, a rule making petitioner that has submitted a community of license change proposal that could, under the new procedures, be filed as a minor modification application will be permitted to withdraw its rule making petition and to resubmit its proposal as an application on the effective date of the new procedure. A party choosing to dismiss a rule making petition and refile as an application may adversely affect its position with respect to earlier filed petitions for rule making or earlier or simultaneously filed applications. Parties opting to dismiss and refile should carefully consider whether doing so would be advantageous to their cut-off rights.

7. In order to accommodate the new procedure, the Commission will remove the allotments of currently authorized and awarded FM facilities from the Table of Allotments (47 CFR 73.202). Currently, all vacant FM allotments as well as FM assignments (that is, channels and communities occupied by authorized facilities) are listed in the Table of Allotments. All of these represent allotments and assignments added to the Table of Allotments through notice-and-comment rule making procedures over more than 40 years of the Table of Allotments' existence. Vacant allotments, which must be protected by all subsequent filings, serve as placeholders for future facilities. The same cut-off principles will apply to implementing applications filed under our comparative commercial and NCE procedures. Once an assignment is made, i.e., upon ''reservation,'' this record supersedes the vacant allotment. Thus, it is unnecessary for ''occupied'' allotments (that is, those that are licensed, permitted, or reserved) to be listed in the Table of Allotments—the authorizations and reserved assignments, reflected in CDBS, protect those facilities and govern their technical facilities and communities of license. Once a station is authorized, application procedures provide reasonable opportunities to interested parties to comment on or object to further modifications of authorized facilities. For this reason, as well as the maturity of the FM service discussed above, it is no longer necessary to change authorized non-reserved band FM stations' attributes through notice-and-comment rule making. Thus, the Commission shall amend the Table of Allotments to reflect only vacant allotments that do not correspond to an authorized station or reserved assignment. Assignments for licensed, permitted, and reserved facilities (those for which applications are pending) will be reflected solely in CDBS. In CDBS, channel/frequency and community assignments for currently authorized stations are represented as ''FA USE.'' ''FA RSV'' is used to designate assignments for winning auction bidders, NCE tentative selectees, and proposed assignments for stations that have filed, or have been directed to file, modification applications for authorized stations. These designations will continue to be used in CDBS to indicate the status and cut-off rights of assignments. Changes to the channel, class, or community of existing facilities will constitute changes to the individual authorizations or applications, rather than to 47 CFR 73.202, and therefore may be made through minor modification application procedures (as adjacent channel and class modifications have been made under the Commission's ''one-step'' procedures). However, the Commission will permit an FM non-reserved band permittee or licensee to use notice and comment procedures to modify its current assignment to specify a non-adjacent class upgrade or downgrade in the same community of license. This action is taken to preserve the facility improvement options now set forth at Section 1.420(g)(1) and (2). The Commission will retain the Table for vacant allotments and will continue to use rule making procedures to establish new channel allotments, as the procedures for new allotments allow for efficient consideration of all proposals and counterproposals in keeping with the Commission's Section 307(b) obligations. While Section 307(b) considerations enter into community of license changes to authorized facilities as well, the same detailed rule making procedures are not as essential when dealing with changes to authorized stations not subject to competing applications. Thus, new allotments and changes to vacant allotments will continue to be made via notice-and-comment rule making procedures. To the extent that a proposal or counter-proposal is contingent upon one or more such changes to vacant allotments, such proposals will also continue to be made via rule making proceedings. However, as discussed below, the Media Bureau will return any rule making proposals or

counterproposals that do not propose changes to vacant allotments, except for notice and comment filings submitted pursuant to Section 1.420(g)(1) or (2).

8. A common aspect of FM allotment petitions and counterproposals, including city of license modifications, are proposed channel substitutions for both vacant allotments and authorized facilities. Rule making proponents are limited to two ''involuntary'' channel substitutions for authorized stations. *See Columbus, Central City, Crookston, Kearney, Lexington, McCook, and Valentine, Nebraska; and Hill City, Kansas*, Report and Order, FCC 86–59, 59 RR 2d 1184 (MMB 1984) (''*Columbus, Nebraska*''). Current procedures impose no limit on voluntary, i.e., consensual, channel substitutions. The bifurcated procedures adopted in the R&O for allotments and assignments require new procedures for these city of license application and rule making components. Channel substitutions for authorized facilities will be treated as ''minor'' changes. Voluntary channel changes must be proposed in the Form 301 applications as set forth below. Involuntary channel changes for authorized stations must be specified in the Form 301 application, but will continue to be limited to two under the *Columbus, Nebraska* policy. The staff will issue an order to show cause with regard to an involuntary channel change if it determines that the entire city of license modification proposal is acceptable for filing. These procedures accord with our current procedures, under which an order to show cause is issued when a rule making proponent seeks an involuntary change to another facility. Proposals to substitute channels for vacant allotments will be filed in accordance with established rule making procedures.

9. Under these revised procedures, certain FM city of license modification proposals may consist of several contingent applications. Some ''hybrid'' filings will consist of both applications and rule making filings. Both the ''pure'' and ''hybrid'' proposals will be subject to the requirements and restrictions that apply to contingent coordinated FM minor change filings. *See* 47 CFR 73.3517(c). It is not necessary to prohibit contingent city of license modification proposals. The staff currently and regularly handles rule making proposals involving several different allotments and communities. All contingent applications filed pursuant to the procedures adopted here will be subject to identical Section 307(b) analysis. The Commission is satisfied that this analysis will function effectively in the application context, just as it does in the rule making context, to safeguard the goals and principals of Section 307(b). All related proposals must be simultaneously filed and clearly cross-reference each of the other component filings. The dismissal, denial or return of any component filing will result in the dismissal or return of all the related filings. Both ''pure'' application and ''hybrid'' filings will be subject to the four-application limit. Both voluntary and involuntary channel changes for authorized stations will count toward the four-application limit. Those components filed pursuant to rule making procedures will not count toward the four-application limit.

10. In the NPRM, the Commission showed that a small percentage of petitioners seeking new allotments in the FM Table of Allotments (also known as ''drop-in'' petitions) were responsible for an inordinate percentage of the drop-in petitions filed. To date, those drop-in proponents have not actively participated in the auctions process. Thus, there appears to be a fundamental disconnect between those adding new allotments and those seeking to obtain authorizations pursuant to the Commission's competitive bidding procedures. Accordingly, in the NPRM the Commission proposed a mechanism to encourage only *bona fide* proponents to seek to add channels to the Table. The mechanism proposed was to require an allocations proponent simultaneously to file a Form 301 application, and pay the appropriate fee, with its petition for rule making. The applicant would also certify in the application that, if its allotment was adopted, it intended to apply to participate in the auction for the new channel. That form would then become the proponent's application for construction permit, should the channel be allotted and the petitioner be the winning bidder. Previously, rule making proponents for new FM allotments needed only to state that they were interested in applying for the station if allotted, and paid no filing fee until and unless the allotment was made and an application filed. The Commission believes that requiring Form 301 and the concurrent filing fee with a petition for rule making, which is currently not required, would discourage insincere proponents, and further believes, as stated in the NPRM, that the public interest is best served by processing only those proposals for new allotments filed by *bona fide* potential applicants, rather than devoting scarce staff resources to processing allotment proposals that may represent less-than-optimal choices to actual auction participants. Accordingly, the Commission adopts this proposal. A party filing a petition for rule making to add a new allotment to the Table, whether as an original proposal or as a counterproposal, must simultaneously file a Form 301 application specifying the proposed facilities. A separate Form 301 and fee must be filed for each proposed new allotment. The application shall include a certification that, if the FM channel allotment requested is adopted, petitioner/counter-proponent intends to apply to participate in the auction of the channel allotment requested and specified in this application. In the event the petitioner or counter-proponent is the high bidder for the allotment, it need only file an amendment to its Form 301 application, if necessary, and will not pay a further filing fee. However, while the Commission need not refund application filing fees paid by applicants whose applications are not granted (*see Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, Memorandum Opinion and Order, 6 FCC Rcd 5919, 5925 n.40 (1991), citing Conference Report, 1989 U.S. Code Cong. & Ad. News at 3036), the Commission recognizes the inequity in retaining filing fees from parties whose rule making proposals are not granted, as the unfavorable disposition of their proposals would render their Form 301 applications a nullity. *See* 47 CFR 1.1113(a)(4). Refunding the filing fee of a successful rule making proponent that loses at auction places the proponent in the same position as competing bidders who were not required to file Form 301 pre-auction. Accordingly, the Commission will entertain waiver requests, pursuant to 47 CFR 1.1117, filed by a petitioner for a new allotment that files a Form 301 for the allotment, and that either has its allotment proposal denied in favor of another proposal or counterproposal, or that applies for the allotment and qualifies to bid for the allotment at auction, if the allotment is awarded to another higher-bidding applicant. A rule making proponent whose proposal is rejected may file its waiver request only after the proceeding is terminated and has become final. A successful rule making proponent who is not the winning bidder for the allotment may file its waiver request only after release of a public notice announcing the winning bidders in the auction. Provided that the waiver applicant has acted in good faith and in accordance with our Rules and

statutes, the Commission will normally grant such waiver requests and issue refunds under 47 CFR 1.1113(a)(4) or 1.1113(a)(5), as applicable. However, such a waiver request will not be viewed favorably if, for example, the rule making petition for a new allotment is returned due to patent legal or engineering defects. Similarly, a successful petitioner that fails to apply to participate in the auction or qualify to bid on the new allotment will not receive a waiver, nor will a petitioner that is the high bidder but either withdraws its high bid or is found unqualified to be the permittee.

11. In the NPRM, the Commission proposed to supplement the policy announced in *Columbus, Nebraska,* which limited to two the number of proposals for involuntary channel substitution changes to the Table of Allotments. The Commission specifically proposed to limit the number of changes to the Table that a party might propose or counter-propose to five, absent waiver based on a showing of significant public interest benefits. It was noted that parties sometimes file proposals (frequently, counterproposals) involving large numbers of changes to facilities, which frequently consumed large amounts of staff resources, and the Commission tentatively concluded that the staff could more efficiently dispose of these proceedings if proponents were required to break them apart into several discrete components. After reviewing comments and upon further consideration, the Commission has determined that it should defer acting on this proposal while it determines the effects on the efficiency of our allocations procedures of the other proposals adopted in the R&O. However, due to concern about the effects of complex proposals and counterproposals on the staff's ability efficiently to process changes to the Table of Allotments, the Commission instructs the staff carefully to review all proposals of five or more changes to the Table of Allotments, including those that may contain fewer than five proposals per party but that are interrelated, such that one party's proposal is dependent on others. The staff may, in its discretion, break such proceedings into smaller ones, return those proposals or counterproposals that do not require changes to vacant allotments and may be filed as minor modification applications, or in extreme cases return proposals or counterproposals in their entirety. The Commission reserves the right to revisit this proposal if deemed necessary in the public interest and to preserve the integrity of the FM allotment and assignment plan.

12. In the NPRM, the Commission proposed to eliminate the existing prohibition against electronic filing of petitions filed in broadcast allotment proceedings, set forth in 47 CFR 1.401(b). Electronic filing has brought substantial benefits in other application contexts, specifically by streamlining processes and enhancing the accuracy and reliability of Commission databases, and those benefits should be extended to the allocations process. Therefore, the Commission adopts the proposal to eliminate from 47 CFR 1.401(b) the prohibition against electronic submission of petitions for rule making in broadcast allocations proceedings. The Media Bureau and Consumer and Governmental Affairs Bureau will announce, by public notice, such procedures as they will devise for submission of broadcast allocations petitions and other documents. It should be noted that, as these are restricted proceedings, such procedures must provide for service on all interested parties, as defined in the Commission's Rules (*see* 47 CFR 1.1202(d)), by electronic or other appropriate means.

13. In the NPRM, the Commission sought comment on First Broadcasting Investment Partners, LLC's (''First Broadcasting'') proposal to abandon the Commission's existing policy against removing the sole local transmission service at a community in order to allow it to become the first local transmission service at another community. First Broadcasting contended that this policy undermines the goal of spectrum efficiency which, in its opinion, should favor provision of first local transmission service to the greatest population. First Broadcasting proposed a presumption that it is in the public interest to permit a station providing a community's sole local service to move to another community provided that (a) at least two other stations provide principal community service to the entirety of the current community, (b) the station would be the first local transmission service in the proposed community, (c) the station moving would provide 70 dBμ service to a larger population in the proposed community of license, and (d) the move would not cause any short spacing and/or would fully or partially resolve existing short spacing. First Broadcasting stated that its proposal would enable the staff to consider multiple public interest benefits of such proposed community of license changes, rather than ending its analysis at preservation of local service, and would ensure that the staff's Section 307(b) analysis will be conducted in an objective manner. After careful consideration and review of comments, the Commission declines to adopt this proposal. The Commission rejects the suggestion that objectivity in decision making can only be achieved by application of a defined multi-part test. Moreover, the Commission's experience shows that the reasons given by applicants for wanting to move the sole local service at a community are varied, and are better suited to a case-by-case waiver analysis than to a ''one size fits all'' test. Thus, the Commission retains its policy disfavoring removal of the sole local transmission service at a community, subject to waiver upon a detailed showing that retention of local service at a station's current community is contrary to the public interest, convenience, and necessity. For example, a showing that circumstances have changed to the extent that the current community of license is no longer a licensable community (due, perhaps, to a precipitous decline in population or significant loss of industry), or is no longer independent of a larger urban area, in the appropriate case might support a waiver to allow move of the station to serve a larger or more independent community. An AM licensee that has lost its transmitter site, and due to terrain or lack of available land cannot find a substitute site that would provide adequate community coverage, might also be able to present a compelling case for waiver. The foregoing examples are offered by way of illustration only, and are neither meant to be exhaustive nor are they meant to imply that a bare allegation of any of these circumstances will result in automatic waiver. All waiver requests are reviewed with an eye toward the particular facts as well as the context in which those facts are presented. Applicants are reminded that the waiver standard requires a detailed recitation of facts and circumstances, including documentary or testimonial (affidavit) evidence where appropriate, demonstrating special circumstances that warrant deviation from the policy, and showing that such deviation serves the public interest. *See Northeast Cellular Telephone Co.* v. *F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio* v. *F.C.C.*, 418 F.2d 1153, 1157–59 (D.C. Cir. 1969). For example, the bare assertion that a station has lost its site, absent evidence showing an exhaustive but fruitless search for sites from which a sole local transmission service could comply with our technical rules, would not suffice to justify grant of a waiver to allow the station to move

to another community. The standard for waiver of a Commission policy is high for a reason. The Commission's rules and policies impose ongoing community service obligations on broadcasters. Moreover, the Commission has concluded that Section 307(b) policies must take into account the public's legitimate expectation that existing broadcast services will be maintained. These considerations will necessarily limit the ability of licensees to move to larger or more lucrative markets. Thus, a broadcaster that sought to locate in a community is expected to serve that community, as is a broadcaster that purchased the sole local transmission service in a particular community. In the latter case, no broadcaster should invest in a station with the expectation that the Commission will routinely approve a request to move to a different community. However, in the rare but appropriate case, Commission policy permits the sole local broadcaster in a community to show that the public interest supports a move to a new community.

14. In the NPRM, the Commission announced a freeze on the filing of new petitions to amend the Table of Allotments, to enable it to complete this proceeding without adding new rule making proceedings that might better be filed under new procedures, and to help eliminate allocations backlogs. The freeze on filing new petitions to amend the Table of Allotments will be lifted on the effective date of this R&O. Because the procedural changes in this R&O will not become effective until 30 days after publication in the **Federal Register**, at that time applicants may file minor modification applications for changes to community of license of full-power FM, noncommercial educational FM, and standard-band AM stations. Similarly, applicants wishing to file coordinated, contingent minor change applications and petitions for rule making as discussed herein must wait until the new community of license application procedures become effective before filing either minor change applications or rule making petitions.

15. Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'')[2] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Notice of Proposed Rule Making (''NPRM'') to this proceeding.[3] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.[4]

16. Need for, and Objectives of, the Report and Order. This Report and Order (''R&O'') adopts rule changes and procedures to streamline the Commission's procedures for adding and modifying certain broadcast station allotments, and to streamline the Commission's FM commercial allotment procedures by allowing electronic filing of rule making petitions to change the FM Table of Allotments. In particular, the rules adopted by this R&O, as required by statute, will permit broadcast permittees and licensees of all full-service AM and FM broadcast stations (except for AM stations in the expanded band) to change their stations' communities of license by filing a minor modification application rather than through rule making proceedings. The new rules also will require parties seeking to add new allotments to the FM Table of Allotments simultaneously to file Form 301 for the new facilities at the time of filing a petition for rule making, rather than after auction. Finally, the new rules eliminate a rule-based prohibition against proponents of new channels in the FM Table of Allotments filing petitions for rule making electronically.

17. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

18. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.''[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[7] 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).[8]

19. The subject rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less in annual receipts as a small business.[9] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[10] Included in this industry are commercial, religious, educational, and other radio stations.[11] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[12] However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.[13] According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on November 2, 2006, about 10,449 (95%) of 10,979 commercial radio stations have revenue of $6.5 million or less. First Broadcasting, which filed the Petition for Rule Making in this proceeding, is included in the definition of ''small business.'' We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any ultimate changes to the allocation rules.

20. Description of Projected Reporting, Record Keeping and other Compliance Requirements. As described, certain rules and procedures will change, but at most will only minimally increase the reporting requirements on existing and potential radio licensees and permittees, insofar as some of the proposed changes require the filing of application forms rather

[2] *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. 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (''CWAAA'').

[3] *NPRM,* 20 FCC Rcd 11169, 11190, 11192.

[4] *See* 5 U.S.C. 604.

[5] 5 U.S.C. 603(b)(3).

[6] *Id.* Sec. 601(6).

[7] *Id.* Sec. 601(3) (incorporating by reference the definition of ''small business concern'' in 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**.'' 5 U.S.C. 601(3).

[8] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[9] *See* 13 CFR 121.201, NAICS Code 515112.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

than rule making petitions. However, the forms to be filed are existing FCC application forms with which broadcasters are already familiar, so any additional burdens are minimal. Applicants seeking to modify a station community of license will need to include, with their Form 301 applications, an exhibit detailing how the proposed community change comports with the policies underlying Section 307(b) of the Communications Act of 1934, as amended. However, current practice requires that rule making proponents demonstrate that the proposed new community of license represents a superior arrangement of allotments under Section 307(b), so any new burdens are minimal. The new rule will also require that applicants for a new community of license provide local public notice in local newspapers and on air. These will impose additional burdens upon applicants. These burdens are identical to those imposed upon applicants for new broadcast facilities and applicants seeking to assign or transfer broadcast licenses. As such, any new burdens are familiar to broadcast licensees, are already set forth in our rules, and are necessary to ensure that members of the public are notified of proposed changes and are afforded the opportunity to comment.

21. Additionally, parties seeking to add new allotments to the FM Table of Allotments must simultaneously file FCC Form 301 with their petitions to add new allotments, and pay the Form 301 filing fee at that time. This requires petitioners for new allotments to file Form 301 earlier in the process than is the case now. However, it is the same Form 301 as is currently filed by successful auction bidders. The only difference from Form 301 currently filed by applicants consists of a certification that the proponent of the new FM allotment will participate in the auction for the new channel if allotted. To the extent that the proponent/applicant is not the winning bidder for the new allotment, the applicant may apply for waiver and refund of the fee; however, the burden will be increased to the extent that such an unsuccessful bidder would not currently be required to file Form 301.

22. Steps Taken to Minimize Significant Impact of Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for 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.[14]

23. The procedural changes adopted in the R&O for adding FM channel allotments and changing stations' communities of license are designed to make the process faster and more efficient, reducing delays to broadcasters in implementing new radio service. The procedure for changing a station's community of license will move from the current two-step process to a one-step minor application process, thus saving applicants time and resources. The Commission will require that petitioners for new FM channel allotments simultaneously file Form 301, and pay the prescribed filing fee for Form 301. Although this requires payment of the filing fee earlier than is the case in current practice, to the extent that petitioners ultimately obtain construction permits for these allotments, it is a fee they would be required to pay in any event, therefore this requirement should impose a minimal burden on petitioners. The Commission also eliminates the current prohibition on electronic filing of petitions to amend the FM Table of Allotments and comments on such proposals. Electronic filing, when implemented, will reduce burdens on all broadcasters, including small entities, by reducing the time and effort spent in preparing and submitting such documents in hard copy, as is the current practice.

24. Report to Congress. The Commission will send a copy of the *R&O,* including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[15] In addition, the Commission will send a copy of the *R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[16]

Ordering Clauses

25. Accordingly, *it is ordered,* pursuant to the authority contained in Sections 1, 2, 4(i), 303(r), and 307 of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303(r), and 307, this *Report and Order* is hereby adopted and the Commission's Rules *are hereby amended* as set forth in the Rule Changes.

26. *It is further ordered* that the rule amendments set forth in the Rule Changes *will become effective* 30 days after publication in the **Federal Register**.

27. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 73

Radio broadcast services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 73 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.401 is amended by revising paragraph (b) and the last sentence of paragraph (d) to read as follows:

§ 1.401 Petitions for rulemaking.

* * * * *

(b) The petition for rule making shall conform to the requirements of §§ 1.49, 1.52, and 1.419(b) (or § 1.420(e), if applicable), and shall be submitted or addressed to the Secretary, Federal Communications Commission, Washington, DC 20554, or may be submitted electronically.

* * * * *

(d) * * * Petitions to amend the FM Table of Allotments must be accompanied by the appropriate construction permit application and payment of the appropriate application filing fee.

* * * * *

■ 3. Section 1.420 is amended by revising the section heading, revising

[14] 5 U.S.C. 603(c)(1)–(c)(4).

[15] *See id.* Sec. 801(a)(1)(A).

[16] *See id.* Sec. 604(b).

paragraph (g) and adding new Note to § 1.420 following paragraph (j); the revisions set forth below are to read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM or TV Tables of Allotments, or for amendment of certain FM assignments.

* * * * *

(g) The Commission may modify the license or permit of a UHF TV station to a VHF channel in the same community in the course of the rule making proceeding to amend § 73.606(b), or it may modify the license or permit of an FM station to another class of channel through notice and comment procedures, if any of the following conditions are met:

(1) There is no other timely filed expression of interest, or

(2) If another interest in the proposed channel is timely filed, an additional equivalent class of channel is also allotted, assigned or available for application.

Note to Paragraph (g): In certain situations, a licensee or permittee may seek an adjacent, intermediate frequency or co-channel upgrade by application. See § 73.203(b) of this chapter.

* * * * *

Note to § 1.420: The reclassification of a Class C station in accordance with the procedure set forth in Note 4 to § 73.3573 may be initiated through the filing of an original petition for amendment of the FM Table of Allotments. The Commission will notify the affected Class C station licensee of the proposed reclassification by issuing a notice of proposed rule making, except that where a triggering petition proposes an amendment or amendments to the FM Table of Allotments in addition to the proposed reclassification, the Commission will issue an order to show cause as set forth in Note 4 to § 73.3573, and a notice of proposed rule making will be issued only after the reclassification issue is resolved. Triggering petitions will be dismissed upon the filing, rather than the grant, of an acceptable construction permit application to increase antenna height to at least 451 meters HAAT by a subject Class C station.

PART 73—RADIO BROADCAST SERVICES

■ 4. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

■ 5. Section 73.202 is amended by revising paragraph (a) introductory text, paragraph (a)(2) and paragraph (b), the Note following paragraph (a)(2) remains unchanged, the following revisions are to read as follows:

§ 73.202 Table of Allotments.

(a) *General.* The following Table of Allotments contains the channels (other than noncommercial educational Channels 201–220) designated for use in communities in the United States, its territories, and possessions, and not currently assigned to a licensee or permittee or subject to a pending application for construction permit or license. All listed channels are for Class B stations in Zones I and I–A and for Class C stations in Zone II unless otherwise specifically designated. Channels to which licensed, permitted, and ''reserved'' facilities have been assigned are reflected in the Media Bureau's publicly available Consolidated Data Base System.

* * * * *

(2) Each channel listed in the Table of Allotments reflects the class of station that is authorized to use it based on the minimum and maximum facility requirements for each class contained in § 73.211.

* * * * *

(b) *Table of FM Allotments.*

	Channel No.
ALABAMA	
Anniston	*261C3
Boligee	297A
Coosada	226A
Frisco City	278A
Livingston	242A
Maplesville	292A
New Hope	278A
Pine Level	248A
Rockford	286A
Saint Florian	274A
ALASKA	
Palmer	238C1
ARIZONA	
Aguila	297C3
Ajo	295A
Ash Fork	267A
Bagdad	269C3
Chino Valley	223A
Ehrenberg	286C2
First Mesa	247C
Fredonia	278C1
Grand Canyon Village	273C1
Heber	288C2
Huachuca City	232A
Leupp	255C2
Overgaard	232C3
Parker	247C3
Patagonia	251A
Paulden	263C3
Peach Springs	285C3
Pima	*296A
Pinetop	294C1
Quartzsite	275C3, 290C2
Rio Rico	300A
Sells	285A
Snowflake	258C2
Somerton	*260C3
Taylor	278C3
Wickenburg	229C3
Willcox	*223C3
ARKANSAS	
Altheimer	251C3
Arkadelphia	228A
Bearden	224A
Clarendon	281A
Cove	232A
Daisy	293C3
Gassville	224A
Greenwood	268A
Hermitage	300A
Paragould	257A
Rison	255A
Sparkman	259A
Strong	296C3
CALIFORNIA	
Alturas	268C1, 277C
Amboy	237A
Barstow	267A
Big Sur	240A
Blythe	239B
Burney	225A
Buttonwillow	265A
Cambria	287A, 293A
Cedarville	260A
Cloverdale	274A
Coachella	278A
Covelo	245A
Desert Center	288A
Essex	280B
Greenfield	254A
Hemet	273A
Kerman	224A
Kernville	289A
King City	275A
Lake Isabella	239A
Lamont	247A
McKinleyville	236C3, 277C3
Mecca	274A
Mojave	255A
Murrieta	281A
Nevada City	297A
Portola	269A
Randsburg	271A
Ridgecrest	229A, 252A
San Joaquin	299A
Susanville	262A
Sutter Creek	*298A
Tecopa	291A
Trona	247A
Twentynine Palms	270A
Wasco	224A
Waterford	294A
Westley	*238A
Willow Creek	253A
COLORADO	
Arriba	240A
Aspen	228A
Cheyenne Wells	224C1
Crawford	274C3
Crested Butte	246C3
De Beque	275C3
Durango	287A
Flagler	283C3
Fruita	255C3

	Channel No.
Genoa	291C3
Gunnison	265C2, 299C3
Hotchkiss	258C3
Hugo	222A
Lake City	247A
Olathe	*270C2, *293C
Orchard Mesa	249C3
Steamboat Springs	255A, 289A
Strasburg	249C3
Stratton	246C1
CONNECTICUT	
DELAWARE	
DISTRICT OF COLUMBIA	
FLORIDA	
Big Pine Key	*239A
Cedar Key	261A
Cross City	249C3
Daytona Beach Shores	258A
Eastpoint	283A
Horseshoe Beach	*234C3
Islamorada	283C2
Jasper	298A
Key Largo	237C3
Key West	244A
Lake Park	262A
Live Oak	*259A
Okeechobee	291A
Otter Creek	*240A
Palm Coast	254A
Perry	228A
Port St. Joe	270C3
Silver Springs Shore	259A
Sugarloaf Key	289A
GEORGIA	
Alamo	287C3
Americus	295A
Calhoun	233A
Crawfordville	234A
Cusseta	279A
Dexter	276A
Homerville	246A
Lincolnton	254A
Milner	290A
Morgan	228A
Patterson	296A
Pineview	226A
Plains	290A
Plainville	285A
Reynolds	*245A
St. Simons Island	229C3
Tallapoosa	255A
Tignall	244A
Ty Ty	249A
Wadley	227A
Woodbury	233A
Young Harris	236A
HAWAII	
Kailua-Kona	244A
Kihei	298C2
IDAHO	
McCall	228C3, 238C3, 275C3, 293C3
Weiser	*280C1
ILLINOIS	
Abingdon	252A
Altamont	288A
Augusta	253A
Canton	*277A
Cedarville	*258A
Clifton	*297A
Cuba	292A
Freeport	*295A
Grayville	229A
Pinckneyville	*282A
West Salem	266A
INDIANA	
Bloomfield	266A
Farmersburg	*242A
Fowler	291A
Madison	*265A
Terre Haute	298B
IOWA	
Asbury	*238A
Keosauqua	*271C3
Moville	*246A
North English	246A
Rudd	*268A
KANSAS	
Americus	240A
Atwood	292C0
Council Grove	*281C3
KENTUCKY	
Burgin	290A
Morgantown	256A
Science Hill	291A
Smith Mills	*233A
LOUISIANA	
Anacoco	276C3
Bordelonville	280A
Cameron	296C3
Clayton	266A
Colfax	267A
Dulac	242A
Florien	242A
Franklin	295C3
Golden Meadow	*289C2
Harrisonburg	232A
Haynesville	288A
Homer	*272A
Hornbeck	269A
Lake Providence	224A
Leesville	224A
New Llano	252C3
Oak Grove	289A
Oil City	285A
Opelousas	279A
Ringgold	*253C3
Rosepine	281A
St. Joseph	257C3
Wisner	300C3
MAINE	
Monticello	234A
MARYLAND	
MASSACHUSETTS	
Adams	255A
East Harwich	254A
Nantucket	249A
West Tisbury	*282A
MICHIGAN	
Alpena	289A
Crystal Falls	280C2
Custer	263A
Ferrysburg	226A
Fife Lake	240C2
Frederic	237A
Glen Arbor	227A
Harrison	280A
Hubbardston	*279A
Houghton	242C1
Ludington	242A
McBain	300A
Onaway	292C2
Paradise	234A
Pentwater	280A
Traverse City	283A
MINNESOTA	
Baudette	233C1
Grand Portage	224C, 245C0, 274C
Red Lake	231C1
MISSISSIPPI	
Calhoun City	272A
Greenwood	277A
Holly Springs	243A
Marietta	250A
Oxford	286A
Vaiden	271A
Vardaman	258A
Walnut Grove	244C2
MISSOURI	
Alton	290A
Bourbon	231A
Columbia	252C2
Doolittle	283A
Eminence	281A
Grandin	283A
Huntsville	*278C2
Laurie	*265C3
Lowry City	285A
Madison	247C3
Marceline	256A
Marquand	295A
Moberly	223A
MONTANA	
Bozeman	*240C3
Cut Bank	274C1
Lewistown	300C1
Montana City	293A
Outlook	289C
Roundup	248A
Whitehall	274A
NEBRASKA	
Arthur	300C1

	Channel No.
Firth	229A
Hartington	232C2
Hyannis	250C1
Pierce	248C2
NEVADA	
Battle Mountain	253A
Fallon Station	287C
Fernley	231C3
Pahrump	272C3
Silver Springs	273C
NEW HAMPSHIRE	
Enfield	282A
Groveton	268A
Pittsburg	246A
NEW JERSEY	
NEW MEXICO	
Alamo Community	*298A
Alamogordo	240C2
Carrizozo	261C2
Clayton	248C1
Grants	244C3
Las Vegas	283C2, 296A
Milan	270A
Roswell	237C0
Taos	228A, 288A
Taos Pueblo	292C3
NEW YORK	
Amherst	221A
Celoron	237A
Indian Lake	290A
Keeseville	231A
Montauk	235A
Morrisonville	231A
Rhinebeck	*273A
Rosendale	255A, 273A
NORTH CAROLINA	
Dillsboro	237A
Garysburg	276A
Ocracoke	224C1
NORTH DAKOTA	
Berthold	264C
Tioga	281C1
Williston	253C1
OHIO	
Ashtabula	241A
Cridersville	257A
McConnelsville	279A
North Madison	229A
OKLAHOMA	
Arnett	285C2
Boswell	282C3
Broken Bow	285A
Buffalo	224C2
Cheyenne	247C3
Clayton	241A
Coalgate	242A
Cordell	*229A
Covington	290A
Erick	259C2
Haileyville	290A
Haworth	294A
Holdenville	265A
Hollis	274C2
Kiowa	254A
Leedey	297A
Lone Wolf	224A
Mooreland	254A, 300C2
Muldrow	286A
Okeene	268C3
Pawhuska	233A
Pittsburg	232A
Red Oak	227A
Reydon	264C2
Ringwood	285A
Savanna	275A
Sayre	269C2
Stuart	228A
Taloga	226A
Thomas	288A
Tipton	233C3
Tishomingo	259C3
Valliant	234C3
Vici	249A
Wapanucka	298A
Waynoka	231C2
Weatherford	*286A
Wright City	226A
Wynnewood	*283A
OREGON	
Clatskanie	225C3
Dallas	*252C3
Diamond Lake	299A
Ione	258A
Keno	253A
Madras	*251C1
Merrill	289A
Monument	280C1
Powers	293C2
Prairie City	260C
Prineville	267C1
Terrebonne	293C2
The Dalles	*268C3
PENNSYLVANIA	
Erie	240A
Lawrence Park	224A
Liberty	*298A
Meyersdale	253A
Sheffield	286A
Susquehanna	227A
Sykesville	240A
RHODE ISLAND	
SOUTH CAROLINA	
Pendleton	240A
Quinby	237A
SOUTH DAKOTA	
Edgemont	289C1
Lead	232C
Rosebud	257C
Sisseton	258C2
Wall	299C
TENNESSEE	
Linden	267A
Lynchburg	296A
Oliver Springs	291A
Pigeon Forge	292A
TEXAS	
Annona	263A
Asherton	284A
Aspermont	226C2
Austwell	290A
Baird	243C3
Ballinger	238A
Balmorhea	283C
Bangs	250C3
Benavides	282A
Benjamin	237C3
Big Lake	246A, 296C2
Big Spring	265C3
Big Wells	271A
Blanket	284A
Blossom	224C2
Brackettville	234A
Bruni	293A
Buffalo Gap	227A
Burnet	*240A
Camp Wood	271A
Canadian	235C1
Carbon	238A
Carrizo Springs	295A
Centerville	274A
Channing	284C
Childress	281C2
Colorado City	257A
Comanche	280A
Cotulla	242A, 264A, 289A
Crosbyton	264C3
Crowell	293C3
Cuney	259A
Dalhart	261C
Denver City	*248C2
Detroit	282C2
Dickens	240A, 294A
Dilley	229A
Eagle Lake	237C3
El Indio	236A
Eldorado	258C1, 285A, 293A
Elkhart	265A
Encinal	259A, 273A, 286A
Encino	250A, 283A
Estelline	263C3
Floydada	255A
Fort Stockton	263C
Freer	288A
Garwood	247A
George West	250A, 292A
Goliad	282A
Goree	275A
Grapeland	232C3
Groom	223A
Guthrie	252A
Hamilton	299A
Hamlin	283C2
Hawley	269A
Hebbronville	232A, 254A
Hewitt	294A
Hico	285A
Hooks	231A
Idalou	299A
Iraan	269C2
Jacksonville	236A
Jayton	231C2
Junction	277C3, 284A, 292A, 297A

	Channel No.
Kermit	229A
Knox City	291A
La Pryor	278A
Leakey	257A, 275A, 299A
Llano	293C3
Lockney	271C3
Lometa	253A
Longview	300C2
Lovelady	288A
Marathon	278C
Mason	269C3, 281C2
Matador	221C2, 227C3
Matagorda	252A
McCamey	233C3
McLean	267C3
Memphis	283A, 292A
Menard	242A, 265C2, 287C3
Mertzon	278C2
Meyersville	261A
Moody	256A
Mount Enterprise	231A
Muleshoe	227C1
Mullin	224C3
Munday	270C1
Newcastle	263A
O'Brien	261A
Ozona	275C3, 289C1
Paducah	234C3
Paint Rock	296C3
Palacios	264A
Pampa	277C2
Panhandle	291C3
Pearsall	227A
Pineland	256A
Port Isabel	288A
Premont	287A
Presidio	292C1
Quanah	255C3
Rankin	229C3
Richland Springs	235A, 299A
Rising Star	290C3
Roaring Springs	276C3
Robert Lee	289A
Roby	249A
Rocksprings	235C3
Rotan	290A
Rule	239C2, 253A
Sabinal	296A
San Diego	273A
San Isidro	247A
Sanderson	274C1, 286C2
Santa Anna	282A
Savoy	297A
Shamrock	271A
Sheffield	224C2
Silverton	252A
Smiley	280A
Snyder	235C3
Sonora	237C3, 272A
Spur	254A, 260C3
Stamford	233A
Sweetwater	221C3
Teague	237C3
Turkey	244C2, 269A
Van Alstyne	*260A
Weinert	266C3
Wellington	248A
Wells	254A
Westbrook	272A
Wheeler	280C2
Zapata	292A

	Channel No.
UTAH	
Beaver	259A
Fountain Green	*260A
Manila	228A
Mona	225A
Parowan	300C2
Salina	233C
Toquerville	280C
VERMONT	
Albany	233A
Canaan	231C3
Poultney	223A
VIRGINIA	
Alberta	299A
Belle Haven	252A
Iron Gate	270A
Lynchburg	229A
Shawsville	273A
Shenandoah	*296A
WASHINGTON	
Chewelah	*274C3
Coupeville	266A
Goldendale	240A
Oak Harbor	*233A, 277A
Port Angeles	229A
Sedro-Woolley	289A
Sequim	237A
Union Gap	285A
Waitsburg	272A
WEST VIRGINIA	
Glenville	299A
Marlinton	292A
St Marys	*287A
White Sulphur Springs	227A
WISCONSIN	
Ashland	*275A
Augusta	*268C3
Boscobel	244C3
Crandon	276C3
Ephraim	295A
Hayward	*232C2
Laona	272C3
New Holstein	225A
Owen	242C3
Rhinelander	243C3
Rosholt	263A
Tigerton	295A
Tomahawk	265C3
Two Rivers	255A
Washburn	*284A
WYOMING	
Bairoil	235A
Centennial	248A
Meeteetse	273C
Pine Bluffs	238C3
Reliance	254C3
Sinclair	267C

	Channel No.
AMERICAN SAMOA	
CENTRAL MARIANAS	
GARAPAN	
GUAM	
PUERTO RICO	
Santa Isabel	251A
VIRGIN ISLANDS	
Charlotte Amalie	257A
Frederiksted	258A

■ 6. Section 73.203 is revised to read as follows:

§ 73.203 Availability of channels.

(a) Except as provided for in paragraph (b) of this section and § 1.401(d) of this chapter and 73.3573(a)(1), applications may be filed to construct new FM broadcast stations only at the communities and on the channels contained in the Table of Allotments (§ 73.202(b)).

(b) Applications filed on a first come, first served basis for the minor modification of an existing FM broadcast station may propose any change in channel and/or class and/or community not defined as major in § 73.3573(a). Applications for a change in community of license must comply with the requirements set forth in § 73.3573(g).

Note to § 73.203: This section is limited to non-reserved band changes in channel and/or class and/or community. Applications requesting such changes must meet either the minimum spacing requirements of § 73.207 at the site specified in the application, without resort to the provisions of the Commission's rules permitting short spaced stations as set forth in §§ 73.213 through 73.215, or demonstrate by a separate exhibit attached to the application the existence of a suitable allotment site that fully complies with §§ 73.207 and 73.315 without resort to §§ 73.213 through 73.215.

■ 7. Section 73.1690 is amended by adding paragraph (b)(9) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(b) * * *

(9) Any change in the community of license, where the proposed new facilities are the same as, or would be mutually exclusive with, the licensee's or permittee's present assignment.

* * * * *

■ 8. Section 73.3571 is amended by revising paragraph (a)(1), and adding new paragraph (j) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an AM station authorized under this part is any change in frequency, except frequency changes to non-expanded band first, second or third adjacent channels. A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed. A major change in community of license is one in which the applicant's daytime facilities at the proposed community are not mutually exclusive, as defined in § 73.37, with the applicant's current daytime facilities, or any change in community of license of an AM station in the 1605–1705 kHz band. All other changes will be considered minor.

* * * * *

(j) Applications proposing to change the community of license of an AM station, except for an AM station in the 1605–1705 kHz band, are considered to be minor modifications under paragraphs (a)(2) and (f) of this section, and are subject to the following requirements:

(1) The applicant must attach an exhibit to its application containing information demonstrating that the proposed community of license change constitutes a preferential arrangement of assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. 307(b));

(2) The daytime facilities specified by the applicant at the proposed community of license must be mutually exclusive, as defined in § 73.37, with the applicant's current daytime facilities; and

(3) Notwithstanding the provisions of § 73.3580(a), the applicant must comply with the local public notice provisions of §§ 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f). The exception contained in § 73.3580(e) shall not apply to an application proposing to change the community of license of an AM station.

■ 9. Section 73.3573 is amended by revising paragraph (a)(1), adding new paragraph (g), and revising Note 1 to § 73.3573 (Notes 2, 3, and 4 to § 73.3573 remain unchanged), the revisions are to read as follows:

§ 73.3573 Processing of FM broadcast station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes of authorized stations. A major change in ownership is any change where the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed. In the case of a Class D or an NCE FM reserved band channel station, a major facility change is any change in antenna location which would not continue to provide a 1 mV/m service to some portion of its previously authorized 1 mV/m service area. In the case of a Class D station, a major facility change is any change in community of license or any change in frequency other than to a first-, second-, or third-adjacent channel. A major facility change for a commercial or a noncommercial educational full service FM station, a winning auction bidder, or a tentative selectee authorized or determined under this part is any change in frequency or community of license which is not in accord with its current assignment, except for the following:

(i) A change in community of license which complies with the requirements of paragraph (g) of this section;

(ii) A change to a higher or lower class co-channel, first-, second-, or third-adjacent channel, or intermediate frequency;

(iii) A change to a same-class first-, second-, or third-adjacent channel, or intermediate frequency;

(iv) A channel substitution, subject to the provisions of Section 316 of the Communications Act for involuntary channel substitutions.

* * * * *

(g) Applications proposing to change the community of license of an FM station or assignment are considered to be minor modifications under paragraphs (a)(2), (e)(1), and (f)(1) of this section, and are subject to the following requirements:

(1) The applicant must attach an exhibit to its application containing information demonstrating that the proposed community of license change constitutes a preferential arrangement of allotments or assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. 307(b));

(2) The facilities specified by the applicant at the proposed community of license must be mutually exclusive, as defined in § 73.207 or 73.509, with the applicant's current facilities or its current assignment, in the case of a winning auction bidder or tentative selectee; and

(3) Notwithstanding the provisions of § 73.3580(a), the applicant must comply with the local public notice provisions of §§ 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f). The exception contained in § 73.3580(e) shall not apply to an application proposing to change the community of license of an FM station.

(4) Non-reserved band applications must demonstrate the existence of a suitable assignment or allotment site that fully complies with §§ 73.207 and 73.315 without resort to § 73.213 or 73.215.

Note 1 to § 73.3573: Applications to modify the channel and/or class to an adjacent channel, intermediate frequency (IF) channel, or co-channel may utilize the provisions of the Commission's Rules permitting short spaced stations as set forth in § 73.215 as long as the applicant shows by separate exhibit attached to the application the existence of an allotment reference site which meets the allotment standards, the minimum spacing requirements of § 73.207 and the city grade coverage requirements of § 73.315. This exhibit must include a site map or, in the alternative, a statement that the transmitter will be located on an existing tower. Examples of unsuitable allotment reference sites include those which are offshore, in a national or state park in which tower construction is prohibited, on an airport, or otherwise in an area which would necessarily present a hazard to air navigation.

* * * * *

[FR Doc. E6–21633 Filed 12–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296, FCC 05–191]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted rules that expanded the reach of the Emergency Alert System (EAS), as currently constituted, to cover digital communications technologies that are increasingly being used by the American public to receive news and entertainment. This document announces the effective date of these published rules.

DATES: The amendments to §§ 11.15, 11.21, 11.35, 11.51, 11.52, 11.55, and 11.61 published at 70 FR 71023, November 25, 2005 became effective on February 21, 2006.

FOR FURTHER INFORMATION CONTACT: Jean Ann Collins, Public Safety and Homeland Security Bureau, (202) 418–2792.

SUPPLEMENTARY INFORMATION: On Feburary 21, 2006, the Office of

Management and Budget (OMB) approved the information collection requirements contained in §§ 11.15, 11.21, 11.35, 11.51, 11.52, 11.55, and 11.61 pursuant to OMB Control No. 3060–0207. Accordingly, the information collection requirements contained in these rules became effective on February 21, 2006.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–21770 Filed 12–19–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 120406B]

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

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

ACTION: Final rule; notification of U.S. fish quotas and an effort allocation.

SUMMARY: NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

DATES: All fish quotas and the effort allocation are effective January 1, 2007, through December 31, 2007. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2007. Expressions of interest regarding the U.S. 3L shrimp quota allocation and the 3M shrimp effort allocation will be accepted through January 4, 2007.

ADDRESSES: Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of International Affairs, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: *pat.moran@noaa.gov*).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFC) Permit is available from Allison McHale, at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester,MA 01930 (phone: 978–281–9103, fax: 978–281–9135, e-mail: *allison.mchale@noaa.gov*) and from NAFO on the World Wide Web at *http://www.nafo.int*.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2006 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2007. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities, as found in Annexes I.A, I.B, and I.C of the 2007 NAFO Conservation and Enforcement Measures, are as follows:

(1) Redfish	NAFO Division 3M	69 mt
(2) Squid (*Illex*)	NAFO Subareas 3 & 4	453 mt
(3) Shrimp	NAFO Division 3L	245 mt
(4) Shrimp	NAFO Division 3M	1 vessel/ 100 days

Additionally, U.S. vessels may be authorized to fish any available portion of the 627 mt allocation of oceanic redfish in NAFO Subarea 2 and Divisions 1F and 3K allocated to NAFO members that are not also members of the Northeast Atlantic Fisheries Commission. Fishing opportunities may also be authorized for U.S. fishermen in the ''Others'' category for: Division 3LNO yellowtail flounder (76 mt); Division 3NO white hake (500 mt); Division 3LNO skates (500 mt); and Division 3O redfish (100 mt). Procedures for obtaining NMFS authorization are specified here.

U.S. Fish Quota Allocations

Expressions of interest to fish for any or all of the U.S. fish quota allocations and ''Others'' category allocations in NAFO will be considered from U.S. vessels in possession of a valid High Seas Fishing Compliance (HSFC) permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration, and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and dates of fishing operations should be included. To ensure equitable access by U.S. vessel owners, NMFS may promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFC permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel, or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in 50 CFR 648.23(b); and

(4) The vessel operator complies with the HSFC permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

U.S. 3M Effort Allocation

Expressions of interest in harvesting the U.S. portion of the 2007 NAFO 3M shrimp effort allocation (1 vessel/100 days) will be considered from owners of U.S. vessels in possession of a valid HSFC permit. All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**).

Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In the event that multiple expressions of interest are made by U.S. vessel owners, NMFS may promulgate regulations designed to choose one U.S. applicant from among expressions of interest.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS Northeast Regional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Chartering Arrangements

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2007 NAFO 3L shrimp quota allocation and/or 3M shrimp effort allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2007 U.S. quota allocation for 3L shrimp and/or the effort allocation for 3M shrimp. Under NAFO rules in effect through 2007, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. effort allocation provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocation is transferred to that flag state. NAFO Parties must be notified of such a chartering operation through a mail notification process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: provisional monthly catches within 30 days following the calendar month in which the catches were made; provisional daily catches of shrimp taken from Division 3L; provisional monthly fishing days in Division 3M within 30 days following the calendar month in which the catches were made; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention. Furthermore, the United States may also consider a Contracting Party's previous compliance with the NAFO incidental catch limits, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Contracting Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: the name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag state; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed six months). More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel actually would take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the use of chartering operations, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible. Once the allocation has been awarded for use in a chartering operation, NMFS will immediately take appropriate steps to notify NAFO and transfer the U.S. 3L shrimp quota allocation and/or the 3M shrimp effort allocation to the appropriate Contracting Party.

After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests meet the criteria described in this notice. All individuals/companies submitting expressions of interest to NMFS will be contacted if an allocation has been awarded. Please note that if the U.S. portion of the 2007 NAFO 3L shrimp quota allocation and/or 3M shrimp effort allocation is awarded to a U.S. vessel or a specified chartering operation, it may not be transferred without the express, written consent of NMFS.

Dated: December 14, 2006.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E6–21741 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060418103–6181–02 ; I.D. 121306B]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Period 2 Quota Harvested

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

ACTION: Closure of spiny dogfish fishery.

SUMMARY: NMFS announces that the spiny dogfish commercial quota available to the coastal states from Maine through Florida for the semi-annual quota period, November 1, 2006 – April 30 , 2007, has been harvested. Therefore, effective 0001 hours, December 19, 2006, federally permitted commercial vessels may not fish for, possess, transfer, or land spiny dogfish until May 1, 2007, when the 2007 Period 1 quota becomes available. Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing spiny dogfish in these states. This action is necessary to prevent the fishery from exceeding its Period 2 quota and to allow for effective management of this stock.

DATES: Quota Period 2 for the spiny dogfish fishery is closed effective at 0001 hr local time, December 19, 2006, through 2400 hr local time April 30, 2007. Effective December 19, 2006, federally permitted dealers are also advised that they may not purchase spiny dogfish from federally permitted spiny dogfish vessels.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist,

at (978) 281–9221, or *Don.Frei@Noaa.gov*.

SUPPLEMENTARY INFORMATION:

Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages specified in the fishery management plan. The commercial quota is distributed to the coastal states from Maine through Florida, as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2006 fishing year is 4 million lb (1.81 million kg) (71 FR 40436, July 17, 2006). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30). Vessel possession limits are intended to preclude directed fishing, and they are set at 600 lb (272 kg) for both quota Periods 1 and 2. Quota Period 1 is allocated 2.3 million lb (1.05 million kg), and quota Period 2 is allocated 1.7 million lb (763,849 kg) of the commercial quota. The total quota cannot be exceeded, so landings in excess of the amount allocated to quota Period 1 have the effect of reducing the quota available to the fishery during quota Period 2.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data, and other available information, determines when the total commercial quota will be harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the Federal spiny dogfish commercial quota has been harvested and no Federal commercial quota is available for landing spiny dogfish for the remainder of that quota period.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota has been harvested and that no commercial quota for the spiny dogfish fishery is available. Therefore, effective 0001 hr local time, December 19, 2006, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits are prohibited through April 30, 2007, 2400 hr local time. The 2007 Period 1 quota will be available for commercial spiny dogfish harvest on May 1, 2007. Effective December 19, 2006, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued Federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

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

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

Dated: December 15, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9785 Filed 12–15–06; 1:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 244
Wednesday, December 20, 2006

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0002]

RIN 0579–AB91

Boll Weevil; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would establish domestic boll weevil regulations that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton-producing States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before February 1, 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–2006–0002 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–2006–0002, 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–2006–0002.

Reading Room: You may read any comments that we receive on Docket No. APHIS–2006–0002 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. William Grefenstette, National Coordinator, Boll Weevil Eradication Program, PPQ, APHIS, 4700 River Road Unit 138, Riverdale, MD 20737–1236; (301) 734–8676.

SUPPLEMENTARY INFORMATION: On October 31, 2006, we published in the **Federal Register** (71 FR 63707–63717, Docket No. APHIS–2006–0002) a proposal to establish domestic boll weevil regulations that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton-producing States. The proposed regulations would help prevent the artificial spread of boll weevil into noninfested areas of the United States and the reinfestation of areas from which the boll weevil has been eradicated.

Comments on the proposed rule were required to be received on or before January 2, 2007. We are extending the comment period on Docket No. APHIS–2006–0002 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

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).

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

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–21676 Filed 12–19–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 43, and 45

[Docket Nos. FAA–2006–25877 and 25882; Notice No. 06–18]

RIN 2120–AI78

Production and Airworthiness Approvals; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends by 30 days the comment period for an NPRM that was published on October 5, 2006. In that document, the FAA proposed changes to its certification procedures and identification requirements for aeronautical products and parts. This extension is a result of requests from the Aeronautical Repair Station Association, the Aerospace Industries Association, and the General Aviation Manufacturers Association.

DATES: Send your comments on or before February 5, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–25877 using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Capron, Production Certification Branch, AIR–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3343.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 concerning this proposed rulemaking. The docket is available for public inspection 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. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before 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 this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Readers should note that the FAA has posted on its Web site (*http://www.faa.gov/aircraft/draft_docs*) four draft Advisory Circulars (ACs). These ACs describe ways to comply with the requirements of this NPRM. We are also extending by 30 days the comment period on the ACs. Send your comments to reach us by February 5, 2007 using any of the methods described in the **ADDRESSES** section of this NPRM. Note that the docket for AC comments (FAA–2006–25882) is different from the docket for NPRM comments.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Background

On October 5, 2006, the Federal Aviation Administration (FAA) issued a Notice of Proposed Rulemaking (NPRM) entitled, Production and Airworthiness Approvals, Part Marking, and Miscellaneous Proposals (71 FR 58915). Comments on that document were due on or before January 3, 2007.

By letter dated December 5, 2006, the Aeronautical Repair Station Association (ARSA) asked FAA to extend the comment period for 90 days. ARSA believes the need for an extended comment period arises from the scope and extent of the changes proposed in the NPRM, the timing of its release, and the impact it will have on small businesses. ARSA also asked that we extend the comment period on the draft ACs for 90 days.

By letter dated December 6, 2006, the Aerospace Industries Association (AIA) and the General Aviation Manufacturers Association (GAMA) asked FAA to extend the comment period for 45 days. AIA and GAMA cited several factors that, in their view, necessitate the extension, including the length of time since the Aviation Rulemaking Advisory Committee recommendation was submitted to FAA, the scope and impact of the proposal, and the effective shortening of the comment period by observance of the holidays.

While we concur with the petitioners' requests for an extension of the comment period, we believe that a 45-day or 90-day extension is not warranted. We have already provided a 90-day comment period. An additional 90 days would result in a comment period extending for six full months. Although we agree that additional time for comments may be needed, this need must be balanced against the need to proceed expeditiously with a rulemaking that first involved industry input through an Aviation Rulemaking Advisory Committee in 1993. We believe an additional 30 days allows

adequate time for interested parties to provide meaningful comments. Absent unusual circumstances, we do not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by ARSA, AIA, and GAMA for extension of the comment period on the Production and Airworthiness Approvals NPRM. The petitioners have shown a substantive interest in the proposed rule and good cause for the extension. The FAA also has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, we are extending the comment period for 30 days until February 5, 2007.

Issued in Washington, DC, December 13, 2006.

Dorenda D. Baker,

Acting Director, Aircraft Certification Service.

[FR Doc. E6–21657 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 217, 241, 250, 291, and 298

[Docket No. OST 2006–26053]

RIN 2139–AA11

Submitting Airline Data Via the Internet

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation proposes that U.S. and foreign air carriers submit their required recurrent financial, traffic, operational and consumer reports via the internet (e-filing). The proposed action would enhance security of the data, eliminate air carriers' mailing costs, eliminate the need for the Department to keypunch hardcopy data, and provide reporting air carriers with immediate notification and a receipt from the Department that the report was received.

DATES: Written comments should be submitted on or before February 20, 2007.

ADDRESSES: You may send comments, identified by Docket Number OST–2006–26053, using any of the following methods:

DOT Docket Web site: http://dms.dot.gov and follow the instructions for sending your comments electronically.

Government-wide rulemaking Web site: http://www.regulations.gov and follow the instructions for sending your comments electronically.

Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

Fax: 1–202–493–2251.

Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

DOT will post all comments that we receive, without change, to *http//dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

If you want DOT to acknowledge receipt of your comments, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Docket: To read background documents or comments received, go to *http://dms.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room 4125, Research and Innovative Technology Administration, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

SUPPLEMENTARY INFORMATION: DOT invites air carriers and other interested persons to participate in this rulemaking by submitting written comments or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. Privacy Act: Using the search function of DOT docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment. You may review DOT's Privacy Act Statement that was published in the **Federal Register** on April 11, 2000 (65 FR 19475–19570) or you may visit *http://dms.dot.gov.*

Background

Receiving and processing aviation data is an essential business process for the Department of Transportation (DOT). To increase efficiency and reduce costs of the filing process to both the air carriers and the government, DOT proposes that all aviation data that is collected by the Bureau of Transportation Statistics (BTS) be transmitted via the internet (e-filing). Our proposed e-filing is designed to be user friendly. Automated, built-in data edits would alert filers of incomplete information, thus reducing filing errors and the need for corrective re-processing. E-filing is more secure than attaching files to e-mails. E-filing does not have the size limit constraints encountered by attachment to e-mail submissions. E-filing provides the submitters with immediate confirmation that the filing has been received by BTS. E-filing should eliminate the need for BTS to key punch hard copy records into its various data bases.

The DOT proposes to phase-in e-filing for the following schedules, forms and reports:

T–8—Report of All-Cargo Operations;
T–100—U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market;
T–100(f)—Air Carrier Traffic Data by Nonstop Segment and on-Flight Market;
Form 41 Schedules A Certification, B–1 and B–1.1 Balance Sheet, B–7 Airframe and Aircraft Engine Acquisitions and Retirements, B–12 Statement of Changes in Financial Position, B–43 Inventory of Airframes and Aircraft Engines, P–1.1 and P–1.2 Statement of Operations, P–1(a) Interim Operations Report, P–2 Notes to BTS Form 41 Report, P–5.1 and P–5.2 Aircraft Operating Expenses, P–6 Operating Expenses by Objective Groupings, P–7 Operating Expenses by Functional Groupings—Group III Air Carriers, P–10 Employment Statistics by Labor Category, P–12(a) Fuel Consumption by Type of Service and Entity;
Form 183—Report of Extension of Credit to Political Candidates;
Form 251—Report of Passengers Denied Confirmed Space;
Form 291—A Statement of Operations for Section 41103 Operations;
Form 298–C, Schedules F–1 Report of Financial Data, and F–2 Report of Aircraft Operating;
Part 234—On-Time Flight Performance Report;
Part 234.6—Baggage Handling Statistics; and
Part 241—The Passenger-Origin Destination Survey Report.

Selected Alaskan carriers are participating in an e-filing pilot program for submitting their T–100 traffic data. After resolving several initial system problems, the pilot project has progressed smoothly and the participating carriers appear satisfied with the pilot project. The carriers are allowed to log on to our Web site and electronically submit T–100 market and/or segment data. The Web application performs an initial check on the client site, uploads the files to an isolated secure location on a Pilot Test Server, logs the receipt, and sends an acknowledgement to the submitter. Depending on the form, a submitter would attach a file or complete an on-line form to meet its reporting obligation. Because of the size of the Passenger Origin-Destination Survey Report, the T–100 U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market and the Part 234 On-Time Flight Performance Report, carriers would be required to attach a comma delimited file. For BTS Schedules B–12 Statement of Changes in Financial Position and P–2 Notes to BTS Form 41 Report, which are ''free form'' reports, carriers would attach an MS Word document or a text file to meet their reporting burden.

The T–100 and T–100(f) would be the initial reports selected for e-filing. Carriers would receive 60-days notice via an Office of Airline Information (OAI) Accounting and Reporting Directive before implementing the requirement to submit other forms or schedules by e-filing.

The Web form would allow carriers to log on to the secure Web site and submit various data they are required to file with OAI. The Web form performs user authentication, validates filer information and basics of the data to be uploaded, uploads the files to an isolated secure location, logs the receipt, and sends an acknowledgement. The URL of the BTS E-Filing Center is *http://www.efile.rita.dot.gov*. The URL will automatically redirect the user to a secured portal (https).

Statutory and Executive Order Reviews

A. Executive Order No. 12866: Regulatory and Planning Review

Under Executive Order No 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed action is not a ''significant regulatory action'' under Executive Order No 12866. Therefore, it has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Because this rule merely proposes a change in the reporting process and not the underlying reporting requirements it would have minimal economic impacts. The proposal would only involve minimal transitional costs and would not place any additional reporting burden on air carriers. We estimate that this proposal may lessen the long-term compliance costs for air carriers by reducing their mailing costs. In addition, the proposed action would enhance data security and save government costs by eliminating the need for the BTS to keypunch hardcopy data submissions. Finally, the proposal would provide air carriers immediate submission notification and a receipt that the BTS has received the data.

B. Paperwork Reduction Act

BTS tentatively finds that this proposed action would not change the current reporting burden on air carriers for the purposes of the Paperwork Reduction Act. BTS requests comments on any aspects of this proposal, including: (1) An estimate on any cost savings; (2) ways to enhance the quality, usefulness, and clarity of the collected information; and (3) ways to minimize the collection burden without reducing the quality of the information collected, including additional use of automated collection techniques or other forms of information technology. To submit comments to BTS on theses issues, please follow the instructions that appear in the **ADDRESSES** section of this document. You may also send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention RITA Desk Officer. If after evaluating the public comments, the agency believes that the agency action will result in reduction of the reporting burden hours for the reporting air carriers, the agency will notify OMB of the change in burden hours for the applicable information collection activities (OMB Control Numbers—2139–0001, 2138–0009, 2138–0013, 2138–0018, 2138–0040 and 2138–0041) and make the appropriate adjustment(s) in the agency's paperwork inventory.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This proposal will not, if adopted, have a significant economic impact on a substantial number of small entities.

D. Executive Order 12612

This rule has been analyzed in accordance to the principles and criteria in Executive Order 12612 (''Federalism'') and DOT has determined the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda each April and October. The RIN Number 2139–AA11 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Parts 217, 241, 250, 291, and 298

Administrative practice and procedures, Air carriers, Air taxis, Consumer protection, Freight, Reporting and recordkeeping requirements, and Uniform system of accounts.

Accordingly, the Department of Transportation proposes to amend 14 CFR Chapter II as follows:

PART 217—[AMENDED]

1. The authority of part 217 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 413, 417.

2. Section 217.3(e) is proposed to be revised as follows:

§ 217.3 Reporting requirements.

* * * * *

(e) Schedule T–100(f) shall be filed with the Bureau of Transportation Statistics using an e-filing portal. The URL of the BTS E-Filing Center is *http://www.efile.rita.dot.gov.* The URL will automatically redirect the user to a secured portal (https).

PART 241—[AMENDED]

3. The authority of part 241 continues to read as follows

Authority: 49 U.S.C. 329 and chapters 401, 411, 417.

4. Section 19–1 (c) is proposed to be revised as follows:

§ 19–1 Applicability.

* * * * *

(c) Each U.S. carrier shall submit using an e-filing portal its Form 41 Schedule T–100 U.S. Air Carrier Traffic and Capacity data by Nonstop Segment and On-flight Market. The URL of the BTS E-Filing Center is *http://www.efile.rita.dot.gov.* The URL will automatically redirect the user to a secured portal (https).

* * * * *

5. Section 19–7(b) is proposed to be revised as follows:

§ 19–7 Passenger origin-destination survey.

* * * * *

(b) Reports required by this section shall be submitted to the Bureau of Transportation Statistics using an e-filing portal. The URL of BTS E-Filing Center is *http://www.efile.rita.dot.gov.* The URL will automatically redirect the user to a secured port (https).

* * * * *

PART 250—[AMENDED]

6. The authority of part 250 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 413, 417.

7. We propose to designate the existing text as paragraph (a) and add a paragraph (b) to § 250.10 as follows:

§ 250.10 Report of passengers denied confirmed space.

* * * * *

(b) Reports required by this section shall be submitted to the Bureau of Transportation Statistics using an e-filing portal. The URL of the BTS E-Filing Center is *http://www.efile.rita.dot.gov.* The URL will automatically redirect the user to a secured port (https).

PART 291—[AMENDED]

8. The authority of part 291 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 411 and 417.

9. Section 291.42(a)(2) is proposed to be revised as follows:

§ 291.42 Section 41103 financial and traffic reporting.

(a) * * *

(2) Reports required by this section shall be submitted to the Bureau of Transportation Statistics using an e-filing portal. The URL of the BTS E-Filing Center is *http://www.efile.rita.dot.gov.* The URL will automatically redirect the user to a secured port (https).

* * * * *

PART 298—[AMENDED]

10. The authority of part 298 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 417.

11. We propose to revise § 298.60(c) and remove paragraphs (d) and (e):

§ 298.60 General reporting instructions.

* * * * *

(c) Reports required by this section shall be submitted to the Bureau of Transportation Statistics using an e-filing portal. The URL of the BTS E-Filing Center is *http://www.efile.rita.dot.gov.* The URL will automatically redirect the user to a secured port (https). The URL of BTS E-Filing Center is *http://www.efile.rita.dot.gov.*

Issued in Washington, DC, on December 13, 2006.

Donald Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. E6–21599 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

[Docket No. SLSDC 2006–26584]

RIN 2135–AA25

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2007 navigation season, which are effective only in Canada. An amendment to increase the minimum charge per lock for those vessels that are not pleasure craft or subject in Canada to tolls under items 1 and 2 of the Tariff for full or partial transit of the Seaway will apply in the U.S. Also, the SLSDC is proposing to change the toll charged per pleasure craft using the U.S. locks from $25 U.S. or $30 Canadian to $30 U.S. or $30 Canadian. Several minor editorial corrections are being made in section 402.3, ''Interpretation.'' and section 402.6, ''Description and weight of cargo.'' (See **SUPPLEMENTARY INFORMATION**.)

DATES: Any party wishing to present views on the proposed amendment may file comments with the Corporation on or before January 19, 2007.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number SLSDC 2006–26584] 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 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the

Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Craig H. Middlebrook, Acting Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is proposing to revise 33 CFR 402.8, ''Schedule of tolls'', to reflect the fees and charges levied by the SLSMC in Canada beginning in the 2007 navigation season. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada. The collection of tolls by the SLSDC on commercial vessels transiting the U.S. locks is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice or comment is necessary on these amendments.

The SLSDC is proposing to amend 33 CFR 402.8, ''Schedule of tolls'', to increase the minimum charge per vessel per lock for full or partial transit of the Seaway from $20.40 to $25.00. This charge is for vessels that are not pleasure craft or subject in Canada to the tolls under items 1 and 2 of the Tariff. This increase is due to higher operating costs at the locks.

The SLSDC is proposing to modify its practice regarding the collection of pleasure craft tolls by allowing pleasure craft operators to pay the toll for transiting the U.S. locks, Eisenhower and Snell, in either $30 U.S. or $30 Canadian. Currently the toll is payable in $25 U.S. or $30 Canadian, however this has resulted in confusion to pleasure craft operators when transiting both Canadian and U.S. locks. With almost eighty (80) percent of the tolls for pleasure crafts being paid in Canadian dollars and little disparity between the U.S. and Canadian exchange rates, the SLSDC is streamlining the pleasure craft toll collection process by allowing for payment in either $30 U.S. or $30 Canadian. Additionally, the SLSDC is proposing to make several minor editorial changes to 33 CFR 402.3 and 33 CFR 402.5

Regulatory Notices: Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a federalism assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

1. The authority citation for part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4) and 988, as amended; 49 CFR 1.52.

2. Section 402.3 is amended by revising paragraphs (a)(5), (b)(1), and (f) to read as follows

§ 402.3 Interpretation.

* * * * *

(a) * * *

(5) Ores and minerals (crude, screened, sized or concentrated, but not otherwise processed) loose or in sacks, including alumina, bauxite, gravel, phosphate rock, sand, stone and sulphur;

* * * * *

(b) * * *

(1) Empty containers or the tare weight of loaded containers;

* * * * *

(f) *General cargo* means goods other than bulk cargo, grain, government aid cargo, steel slabs and coal.

* * * * *

3. Section 402.5 is amended by revising paragraph (b) to read as follows:

§ 402.5 Description and weight of cargo.

(b) The cargo tonnage shall be rounded to the nearest 1,000 kilograms (2,204.62 pounds.)

4. Section 402.8 is revised to read as follows:

§ 402.8 Schedule of tolls.

Item	Column 1 Description of charges	Column 2 Rate ($) Montreal to or from Lake Ontario (5 locks)	Column 3 Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1.	Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
	(1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time.	0.0966	0.1568
	(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
	(*a*) bulk cargo	1.0012	0.6634
	(*b*) general cargo	2.4124	1.0616
	(*c*) steel slab	2.1833	0.7600
	(*d*) containerized cargo	1.0012	0.6634
	(*e*) government aid cargo	n/a	n/a
	(*f*) grain	0.6151	0.6634
	(*g*) coal	0.5911	0.6634
	(3) a charge per passenger per lock	1.4233	1.4233
	(4) a charge per lock for transit of the Welland Canal in either direction by cargo ships:		
	(*a*) loaded	n/a	529.79
	(*b*) in ballast	n/a	391.43
2.	Subject to item 3, for partial transit of the Seaway	20 percent perlock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).	13 percent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).
3.	Minimum charge per ship per lock transited for full or partial transit of the Seaway.	25.00	25.00
4.	A rebate applicable to the rates of item 1 to 3	n/a	n/a
5.	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes [1].	25.00	25.00
6.	Subject to item 3, in lieu of item 1(4), for vessel carrying new cargo on the Welland Canal or returning ballast after carrying new cargo on the Welland Canal, a charge per gross registered ton of the ship, the gross registered tonnage being calculated according to item 1(1):		
	(a) loaded	n/a	0.1561
	(b) in ballast	n/a	0.1144
7.	Subject to item 3, in lieu of item 1(1), for vessel carrying new cargo on the MLO section or returning ballast after carrying new cargo on the MLO Section, a charge per gross registered ton of the ship, the gross registered tonnage being calculated according to item 1(1).	0.0000	n/a

[1] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $30 U.S. or $30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian Share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Issued at Washington, DC, on December 11, 2006.

Saint Lawrence Seaway Development Corporation.

Collister Johnson, Jr.,

Administrator.

[FR Doc. E6–21743 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–61–P

POSTAL SERVICE

39 CFR Part 20

International Product and Pricing Initiatives

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service ™ is proposing a major redesign of its international products including changes in prices and mail classifications. There are two main features of this redesign.

First, we propose to more closely align our international products with their domestic counterparts for ease of use and added value to customers. This will be accomplished by merging eight current options into four alternatives by combining products with overlapping service standards and prices. We propose to rename the international products to mirror comparable domestic product names.

Proposed enhancements to our international products would include increasing customer convenience through the use of domestic packaging supplies, offering the popular flat-rate envelope option in Express Mail International and adding the flat-rate box option to Priority Mail

International. We would also offer more specific delivery time and tracking information to major destinations.

The second main feature of the redesign includes a proposal to increase international product prices an average of 13 percent necessitated by cost increases that occurred during a price freeze from January 2001 through January 2006. The price increase also addresses changes in market dynamics while remaining below the cumulative change in the Consumer Price Index.

If adopted, the product redesign and prices that we propose in this notice would become effective when we change our domestic prices (that proposal is currently before the Postal Rate Commission in Docket No. R2006–1).

DATES: Submit comments on or before January 19, 2007.

ADDRESSES: Mail or deliver comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., RM 3436, Washington, DC 20260–3436. You may also fax written comments to 202–268–4955. You may inspect and photocopy all written comments between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 11th Floor North, 475 L'Enfant Plaza, SW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole, 202–268–7262; Thomas P. Philson, 202–268–7355; or Janet Mitchell, 202–268–7522.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing a major redesign of its international products including changes in prices and mail classifications. The proposed changes are the first since January 2001 to include structural changes and a realignment of our services.

Currently, customers can send letters and packages using one of eight different mailing options. Our proposal will simplify the international product offering from eight products to four products which closely mirror the domestic products that so many individual and small business customers are familiar with. This will be accomplished by combining existing air services and surface products. In addition to simplifying the product line, we will provide more specific service standards for each of our products. Table 1 outlines our product restructuring and proposed features.

TABLE 1

Current products	Proposed products	Proposed features
Global Express® Guaranteed (documents) Global Express Guaranteed (non-document)	Global Express Guaranteed.	■ 1–3 days. ■ Track and trace. ■ Money-back delivery guarantee*. ■ Insurance included.
Global Express Mail®	Express Mail International.	■ 3–5 days. ■ Tracking to major destinations. ■ Service guarantee to Australia, China, Hong Kong, South Korea, and Japan. ■ Insurance included. ■ Flat-rate envelope.
Airmail Parcel Post Economy Parcel Post Global Priority Mail®	Priority Mail International.	■ 5–8 days. ■ Tracking to major destinations. ■ Insurance available. ■ Flat-rate envelopes for letters and flat rate boxes for parcels.
Airmail Letter Post Economy Letter Post	First-Class Mail International.	■ 4–7 days. ■ Registered service available.

*Some restrictions apply—Refer to terms and conditions on the back of mailing label for details.

Customers will be able to use the familiar expedited domestic supplies for their expedited international shipping. We are also proposing adding the popular flat-rate envelope as an option in Express Mail International, and maintaining the flat-rate envelope option and adding the flat-rate box option to Priority Mail International using the existing domestic supplies. Customers can continue to use existing international packaging while supplies are available.

We propose to increase prices of international products by an average of 13 percent. International prices were essentially frozen from January 2001 to January 2006. This freeze was followed by a 5.9 percent increase on January 7, 2006. Since 2001, our costs have been increasing and alternative carriers have been making yearly increases to their prices. This has resulted in international prices lagging behind both the Consumer Price Index (CPI) and the prices offered by alternative carriers on comparable products. Even with the proposed changes, our comparable services will still be priced lower than those of other international carriers.

Customers who purchase postage using Click-N-Ship, at *http://www.usps.com*, or through an authorized online provider, will receive discounts of 10 percent on Global Express Guaranteed shipments, 8 percent on Express Mail International shipments, and 5 percent on Priority Mail International shipments.

As with our domestic price change proposal (*http://www.usps.com/ratecase*), the proposal for international mail reflects changes in operations and in the marketplace. Both our domestic and international proposals will enhance efficiency, offer attractive choices, and ensure that all types of mail cover their costs.

The following sections describe the realignment of international products.

Global Express Guaranteed ®

Global Express Guaranteed ® (GXG) ® service is an international expedited delivery service provided through an alliance with FedEx Express. GXG provides reliable, high-speed, date-certain service with money-back delivery guarantee to over 190 countries. We propose to simplify the pricing structure of Global Express Guaranteed by combining the existing document and non-document price structure into one. We are proposing an average price increase of 10.1 percent for GXG.

Express Mail International

The Postal Service is proposing Global Express Mail be renamed Express Mail International. The renamed Express Mail International would continue to provide reliable, high speed service to over 190 countries with money back delivery guarantee to select destinations. Document reconstruction insurance and merchandise insurance up to $100 are provided at no additional cost. Optional additional merchandise insurance is available for a fee.

We are proposing to regroup Express Mail International's destination country rate groups based on geography and market factors. This will consolidate 13 country groups into 10. An additional customer convenience includes offering two flat-rate envelope prices, one for Canada and Mexico, and one for all other countries.

We will offer more specific service standards for Express Mail International to help customers decide if this is the right option for them. Average-days-for-delivery information to major destinations will be available via our online postage rate calculator as well as at Post Offices. We are proposing an average price increase of 18.6 percent for Express Mail International.

Priority Mail International

The Postal Service proposes to combine three overlapping services—air parcel post, Global Priority Mail, and economy parcel post—into a single new service—''Priority Mail International.'' Service will be available to over 190 countries. Priority Mail International service will offer the same flat rate packaging as domestic Priority Mail including a flat-rate envelope and two flat-rate box options. Two flat-rate box prices will be offered, one for Canada and Mexico, and one for all other countries. We will offer one flat-rate envelope with two prices, one for Canada and Mexico, and one for all other countries. Letters are not mailable in the flat-rate box but will be allowed in the flat-rate envelope.

We propose to regroup countries based on geography and market factors. This will consolidate 14 country groups into the same 10 country groups proposed for Express Mail International.

We will provide more specific service standards for Priority Mail International to help customers decide if this is the right option for them. Average-days-for-delivery information to all major destinations will be available via our online postage rate calculator as well as at Post Offices. Additional tracking information and extra services will be available for Priority Mail International. We are proposing an average price increase of 16.7 percent for Priority Mail International.

First-Class Mail International

The Postal Service proposes to combine three overlapping services—airmail letters, economy letters, and aerogrammes—into a new single service—''First-Class Mail International.'' The new service is for letters, postcards, and other items weighing up to 4 pounds.

The service standard for First-Class Mail International will be a range of days for delivery and would be priced lower than GXG, Express Mail International, and Priority Mail International. We are proposing an average price increase of 8.6 percent for First-Class Mail International letters and 21.0 percent for postcards.

M-bags

M-bags, which are direct sacks of printed matter to one addressee. They are priced based on the weight of the bag. We are proposing to combine two overlapping services, Airmail M-bags and Economy M-bags. Under the new service, M-bags will travel by air transportation. We are proposing an average price increase for M-bags of 7.7 percent.

International Priority Airmail (IPA)

International Priority Airmail ™ (IPA ®) is a bulk air letter service for First-Class Mail International items. Presort, nonpresort, and drop ship discounts are available. Volume discounts are available through the International Customized Mail (ICM) program for commercial customers who meet minimum program requirements. We are proposing an average price increase of 14.1 percent.

International Surface Air Lift

The Postal Service is proposing to combine three overlapping services; International Surface Air Lift ® (ISAL ®), Publishers' Periodicals, and Books and Sheet Music.

ISAL is a bulk mailing service for First-Class Mail International items. There is a 50-pound minimum per mailing. Presort and drop ship discounts are available. Volume discounts are available through the ICM program for commercial customers who meet minimum program requirements. We are proposing an average price increase of 13.1 percent for International Surface Air Lift.

International Surface Air Lift M-bags

M-bags (direct sacks of printed matter sent to one addressee) can be sent using ISAL service. We are proposing an average price increase of 2.8 percent for International Surface Air Lift M-bags.

Extra Services

The structure of international extra services, formerly special services, would remain the same. However, because of a lack of customer demand, we are proposing to eliminate Recorded Delivery, the international equivalent to domestic Certified Mail ™. In fiscal year 2005, revenue was approximately $3,000 on slightly over 1,000 transactions. The alternative for the few customers who currently use Recorded Delivery would be Registered Mail ™.

We are proposing to remove other extra services associated with economy mail: Economy Registered and Economy Insured. Fees for international extra services linked to domestic fees are currently under review by the Postal Rate Commission and are outside the scope of this proposal. All other international extra services fees are included in this proposal.

Table 2 is a price comparison of current and proposed international extra services.

TABLE 2

Service	Current Fee (dollars)	Proposed Fee (dollars)	Unit Change (dollars)	Percent Change (percent)
Postal Money Order	3.45	3.85	0.40	11.6
International Reply Coupon	1.85	2.00	0.15	8.1
Business Reply Card	0.84	0.90	0.06	7.1
Business Reply Envelope	1.25	1.40	0.15	12.0
Customs Clearance	4.75	5.35	0.60	12.6
Recorded Delivery	2.40	(2)	(2)	(2)
Priority Mail International Insurance 1	1.95	2.40	0.45	23.1

1 $50 insurance to all other countries.
2 Not applicable.

Table 3 provides a list of all available service.

TABLE 3

Extra services linked to domestic fees	Extra services not linked to domestic fees
Certificate of Mailing	Insurance 1.
Express Mail Merchandise Insurance over $100	International Business Reply Mail.
Restricted Delivery	International Reply Coupons.
Return Receipt—Hard copy	Customs Clearance and Delivery Fee.
Registered Mail.	
Pickup Fee.	
Priority Mail International Insurance 2.	

1 Insurance fees for Canada are linked to domestic fees.
2 $50 insurance to Canada.

Rate Group Assignments

The Postal Service proposes to reassign some countries from one rate group to another because of changes in operations and to simplify the rate group structure. We list the country rate group assignments in the table below.

COUNTRY LISTING

Country	GXG rate group	Express mail international rate group	Priority mail international rate group	First class mail international rate group	IPA & ISAL 1
A					
Afghanistan	6	—	5	5	8
Albania	4	4	4	5	5
Algeria	4	8	8	5	8
Andorra	5	5	5	3	3
Angola	4	7	7	5	8
Anguilla	7	9	9	5	6
Antigua & Barbuda	7	—	9	5	6
Argentina	8	9	9	5	6
Armenia	4	4	4	5	8
Aruba	7	9	9	5	6
Ascension	—	—	—	5	5
Australia	6	3	3	4	9
Austria	5	5	5	3	3
Azerbaijan	4	4	4	5	8
B					
Bahamas	7	9	9	5	6
Bahrain	6	8	8	5	8
Bangladesh	6	6	6	5	8
Barbados	7	9	9	5	6
Belarus	4	4	4	5	5
Belgium	3	5	5	3	3
Belize	8	9	9	5	6
Benin	4	7	7	5	8
Bermuda	7	9	9	5	6
Bhutan	6	6	6	5	8

COUNTRY LISTING—Continued

Country	GXG rate group	Express mail international rate group	Priority mail international rate group	First class mail international rate group	IPA & ISAL [1]
Bolivia	8	9	9	5	6
Bosnia-Herzegovina	4	4	4	5	5
Botswana	4	7	7	5	8
Brazil	8	9	9	5	6
British Virgin Islands	7	—	9	5	6
Brunei Darussalam	4	6	6	5	7
Bulgaria	4	4	4	5	5
Burkina Faso	4	7	7	5	8
Burma (Myanmar)	—	6	6	5	8
Burundi	4	7	7	5	8
C					
Cambodia	8	6	6	5	7
Cameroon	4	7	7	5	8
Canada	1	1	1	1	1
Cape Verde	4	7	7	5	8
Cayman Islands	7	9	9	5	6
Central African Republic	4	7	7	5	8
Chad	4	7	7	5	8
Chile	8	9	9	5	6
China	6	3	3	5	7
Colombia	8	9	9	5	6
Comoros	—	—	7	5	8
Congo, Democratic	4	7	7	5	8
Republic of the Congo, Republic of the	4	7	7	5	8
Costa Rica	8	9	9	5	6
Cote d'Ivoire (Ivory Coast)	4	7	7	5	8
Croatia	4	4	4	5	5
Cuba	—	—	—	5	6
Cyprus	6	4	4	5	8
Czech Republic	4	4	4	5	5
D					
Denmark	5	5	5	3	3
Djibouti	4	7	7	5	8
Dominica	7	9	9	5	6
Dominican Republic	7	9	9	5	6
E					
Ecuador	8	9	9	5	6
Egypt	6	8	8	5	8
El Salvador	8	9	9	5	6
Equatorial Guinea	4	7	7	5	8
Eritrea	4	7	7	5	8
Estonia	4	4	4	5	5
Ethiopia	4	8	8	5	8
F					
Falkland Islands	—	—	—	5	6
Faroe Islands	5	5	5	3	5
Fiji	8	6	6	5	7
Finland	5	5	5	3	3
France	3	5	5	3	3
French Guiana	8	9	9	5	6
French Polynesia	4	6	6	5	7
G					
Gabon	4	7	7	5	8
Gambia	4	—	7	5	8
Georgia, Republic of	4	4	4	5	8
Germany	3	5	5	3	3
Ghana	4	7	7	5	8
Gibraltar	4	—	5	3	3
Great Britain & Northern Ireland	3	5	5	3	3
Greece	5	5	5	3	3
Greenland	5	—	4	3	3
Grenada	7	9	9	5	6
Guadeloupe	7	9	9	5	6
Guatemala	8	9	9	5	6
Guinea	4	7	7	5	8
Guinea-Bissau	4	7	7	5	8
Guyana	8	9	9	5	6
H					
Haiti	7	9	9	5	6

COUNTRY LISTING—Continued

Country	GXG rate group	Express mail international rate group	Priority mail international rate group	First class mail international rate group	IPA & ISAL [1]
Honduras	8	9	9	5	6
Hong Kong	3	3	3	5	7
Hungary	4	4	4	5	5
I					
Iceland	5	5	5	3	3
India	6	6	6	5	8
Indonesia	6	6	6	5	7
Iran	—	—	8	5	8
Iraq	6	8	8	5	8
Ireland (Eire)	3	5	5	3	3
Israel	6	8	8	3	3
Italy	3	5	5	3	3
J					
Jamaica	7	9	9	5	6
Japan	3	3	3	4	4
Jordan	6	8	8	5	8
K					
Kazakhstan	4	6	6	5	8
Kenya	4	7	7	5	8
Kiribati	—	—	6	5	7
Korea, Democratic People's Republic of (North)	—	—	—	5	7
Korea, Republic of (South)	6	3	3	5	7
Kuwait	6	8	8	5	8
Kyrgyzstan	4	6	6	5	5
L					
Laos	8	6	6	5	7
Latvia	4	4	4	5	5
Lebanon	6	—	8	5	8
Lesotho	4	7	7	5	8
Liberia	4	7	7	5	8
Libya	—	—	8	5	8
Liechtenstein	5	5	5	3	3
Lithuania	4	4	4	5	5
Luxembourg	3	5	5	3	3
M					
Macao	3	6	6	5	5
Macedonia, Republic of	4	4	4	5	5
Madagascar	4	7	7	5	8
Malawi	4	7	7	5	8
Malaysia	6	6	6	5	7
Maldives	6	6	6	5	8
Mali	4	7	7	5	8
Malta	5	5	5	5	8
Marshall Islands	4	10	10	6	3
Martinique	7	9	9	5	6
Mauritania	4	7	7	5	8
Mauritius	4	7	7	5	8
Mexico	2	2	2	2	2
Micronesia, Federated States of	4	10	10	6	3
Moldova	4	4	4	5	8
Mongolia	4	6	6	5	7
Montserrat	7	—	9	5	6
Morocco	4	8	8	5	8
Mozambique	4	7	7	5	8
N					
Namibia	4	7	7	5	8
Nauru	—	6	6	5	7
Nepal	6	6	6	5	7
Netherlands	3	5	5	3	3
Netherlands Antilles	7	9	9	5	6
New Caledonia	8	6	6	5	7
New Zealand	6	6	6	4	4
Nicaragua	8	9	9	5	6
Niger	4	7	7	5	8
Nigeria	4	7	7	5	8
Norway	5	5	5	3	3
O					
Oman	6	8	8	5	8
P					

COUNTRY LISTING—Continued

Country	GXG rate group	Express mail international rate group	Priority mail international rate group	First class mail international rate group	IPA & ISAL [1]
Pakistan	6	6	6	5	8
Panama	8	9	9	5	6
Papua New Guinea	8	6	6	5	7
Paraguay	8	9	9	5	6
Peru	8	9	9	5	6
Philippines	6	6	6	5	7
Pitcairn Island	—	—	6	5	7
Poland	4	4	4	5	5
Portugal	5	5	5	3	3
Q					
Qatar	6	8	8	5	8
R					
Reunion	4	—	9	5	8
Romania	4	4	4	5	5
Russia	4	4	4	5	5
Rwanda	4	7	7	5	8
S					
St. Christopher (St. Kitts) & Nevis	7	9	9	5	6
Saint Helena	—	—	7	5	8
Saint Lucia	7	9	9	5	6
Saint Pierre & Miquelon	—	—	4	5	6
Saint Vincent & Grenadines	7	9	9	5	6
San Marino	3	5	5	3	3
Sao Tome & Principe	—	—	7	5	5
Saudi Arabia	4	8	8	5	8
Senegal	4	7	7	5	8
Serbia-Montenegro (Yugoslavia)	4	5	5	5	5
Seychelles	4	7	7	5	8
Sierra Leone	4	7	7	5	8
Singapore	3	6	6	5	7
Slovak Republic (Slovakia)	4	5	5	5	5
Slovenia	4	5	5	5	5
Solomon Islands	—	6	6	5	7
Somalia	—	—	—	—	8
South Africa	4	7	7	5	8
Spain	5	5	5	3	3
Sri Lanka	6	6	6	5	8
Sudan	—	7	7	5	8
Suriname	8	—	9	5	6
Swaziland	4	7	7	5	8
Sweden	5	5	5	3	3
Switzerland	5	5	5	3	3
Syrian Arab Republic (Syria)	6	8	8	5	8
T					
Taiwan	3	6	6	5	7
Tajikistan	—	6	6	5	8
Tanzania	4	7	7	5	8
Thailand	6	6	6	5	7
Togo	4	7	7	5	8
Tonga	4	—	6	5	7
Trinidad & Tobago	7	9	9	5	6
Tristan da Cunha	—	—	7	5	8
Tunisia	4	8	8	5	8
Turkey	6	4	4	5	5
Turkmenistan	4	6	6	5	5
Turks & Caicos Islands	7	—	9	5	6
Tuvalu	—	—	6	5	7
U					
Uganda	4	7	7	5	8
Ukraine	4	4	4	5	8
United Arab Emirates	6	8	8	5	8
Uruguay	8	9	9	5	6
Uzbekistan	4	6	6	5	8
V					
Vanuatu	8	6	6	5	7
Vatican City	3	5	5	3	3
Venezuela	8	9	9	5	6
Vietnam	6	6	6	5	7
W					

COUNTRY LISTING—Continued

Country	GXG rate group	Express mail international rate group	Priority mail international rate group	First class mail international rate group	IPA & ISAL [1]
Wallis & Futuna Islands	4	—	6	5	7
Western Samoa	4	6	6	5	7
Y					
Yemen	6	8	8	5	8
Z					
Zambia	4	7	7	5	8
Zimbabwe	4	7	7	5	8

Effective Date

If adopted, the rates, fees, and conditions for mailing that are proposed in this notice will be effective when we change domestic postage pricing in spring 2007. The Postal Service Board of Governors will set the effective date after the domestic mail proceedings currently before the Postal Rate Commission in Docket No. R2006–1 are concluded.

Although the Postal service is exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), your comments are invited on the following proposed revisions to the *International Mail Manual (IMM)*, incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign Relations, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Amend the Mailing Standards of the United States Postal Service, International Mail Manual (IMM) to incorporate the following rates and fees:

International Rates And Fees

GLOBAL EXPRESS GUARANTEED

Weight Not Over (Pounds)	Rate Group 1	Rate Group 2	Rate Group 3	Rate Group 4	Rate Group 5	Rate Group 6	Rate Group 7	Rate Group 8
0.5	$28.50	$28.75	$37.00	$38.00	$75.00	$52.00	$37.00	$38.00
1	$41.00	$42.50	$49.00	$58.00	$93.00	$65.00	$47.00	$55.00
2	$44.50	$47.50	$56.00	$65.75	$107.75	$80.90	$54.20	$63.45
3	$48.00	$52.50	$63.00	$73.50	$122.50	$96.80	$61.40	$71.90
4	$51.50	$57.50	$70.00	$81.25	$137.25	$112.70	$68.60	$80.35
5	$55.00	$62.50	$77.00	$89.00	$152.00	$128.60	$75.80	$88.80
6	$58.50	$67.50	$84.00	$96.75	$166.75	$144.50	$83.00	$97.25
7	$62.00	$72.50	$91.00	$104.50	$181.50	$160.40	$90.20	$105.70
8	$65.50	$77.50	$98.00	$112.25	$196.25	$176.30	$97.40	$114.15
9	$69.00	$82.50	$105.00	$120.00	$211.00	$192.20	$104.60	$122.60
10	$72.50	$87.50	$112.00	$127.75	$225.75	$208.10	$111.80	$131.05
11	$75.35	$90.65	$116.30	$132.65	$237.00	$218.10	$116.05	$137.45
12	$78.20	$93.80	$120.60	$137.55	$248.25	$228.10	$120.30	$143.85
13	$81.05	$96.95	$124.90	$142.45	$259.50	$238.10	$124.55	$150.25
14	$83.90	$100.10	$129.20	$147.35	$270.75	$248.10	$128.80	$156.65
15	$86.75	$103.25	$133.50	$152.25	$282.00	$258.10	$133.05	$163.05
16	$89.60	$106.40	$137.80	$157.15	$293.25	$268.10	$137.30	$169.45
17	$92.45	$109.55	$142.10	$162.05	$304.50	$278.10	$141.55	$175.85
18	$95.30	$112.70	$146.40	$166.95	$315.75	$288.10	$145.80	$182.25
19	$98.15	$115.85	$150.70	$171.85	$327.00	$298.10	$150.05	$188.65
20	$101.00	$119.00	$155.00	$176.75	$338.25	$308.10	$154.30	$195.05
21	$103.85	$122.15	$159.30	$181.65	$349.50	$318.10	$158.55	$201.45
22	$106.70	$125.30	$163.60	$186.55	$360.75	$328.10	$162.80	$207.85
23	$109.55	$128.45	$167.90	$191.45	$372.00	$338.10	$167.05	$214.25
24	$112.40	$131.60	$172.20	$196.35	$383.25	$348.10	$171.30	$220.65
25	$115.25	$134.75	$176.50	$201.25	$394.50	$358.10	$175.55	$227.05
26	$118.10	$137.90	$180.80	$206.15	$405.75	$368.10	$179.80	$233.45
27	$120.95	$141.05	$185.10	$211.05	$417.00	$378.10	$184.05	$239.85
28	$123.80	$144.20	$189.40	$215.95	$428.25	$388.10	$188.30	$246.25
29	$126.65	$147.35	$193.70	$220.85	$439.50	$398.10	$192.55	$252.65
30	$129.50	$150.50	$198.00	$225.75	$450.75	$408.10	$196.80	$259.05
31	$132.35	$153.65	$202.30	$230.65	$462.00	$418.10	$201.05	$265.45

GLOBAL EXPRESS GUARANTEED—Continued

Weight Not Over (Pounds)	Rate Group 1	Rate Group 2	Rate Group 3	Rate Group 4	Rate Group 5	Rate Group 6	Rate Group 7	Rate Group 8
32	$135.20	$156.80	$206.60	$235.55	$473.25	$428.10	$205.30	$271.85
33	$138.05	$159.95	$210.90	$240.45	$484.50	$438.10	$209.55	$278.25
34	$140.90	$163.10	$215.20	$245.35	$495.75	$448.10	$213.80	$284.65
35	$143.75	$166.25	$219.50	$250.25	$507.00	$458.10	$218.05	$291.05
36	$146.60	$169.40	$223.80	$255.15	$518.25	$468.10	$222.30	$297.45
37	$149.45	$172.55	$228.10	$260.05	$529.50	$478.10	$226.55	$303.85
38	$152.30	$175.70	$232.40	$264.95	$540.75	$488.10	$230.80	$310.25
39	$155.15	$178.85	$236.70	$269.85	$552.00	$498.10	$235.05	$316.65
40	$158.00	$182.00	$241.00	$274.75	$563.25	$508.10	$239.30	$323.05
41	$160.10	$184.10	$245.30	$279.55	$571.50	$516.60	$243.45	$329.20
42	$162.20	$186.20	$249.60	$284.35	$579.75	$525.10	$247.60	$335.35
43	$164.30	$188.30	$253.90	$289.15	$588.00	$533.60	$251.75	$341.50
44	$166.40	$190.40	$258.20	$293.95	$596.25	$542.10	$255.90	$347.65
45	$168.50	$192.50	$262.50	$298.75	$604.50	$550.60	$260.05	$353.80
46	$170.60	$194.60	$266.80	$303.55	$612.75	$559.10	$264.20	$359.95
47	$172.70	$196.70	$271.10	$308.35	$621.00	$567.60	$268.35	$366.10
48	$174.80	$198.80	$275.40	$313.15	$629.25	$576.10	$272.50	$372.25
49	$176.90	$200.90	$279.70	$317.95	$637.50	$584.60	$276.65	$378.40
50	$179.00	$203.00	$284.00	$322.75	$645.75	$593.10	$280.80	$384.55
51	$181.10	$205.10	$288.30	$327.55	$654.00	$601.60	$284.95	$390.70
52	$183.20	$207.20	$292.60	$332.35	$662.25	$610.10	$289.10	$396.85
53	$185.30	$209.30	$296.90	$337.15	$670.50	$618.60	$293.25	$403.00
54	$187.40	$211.40	$301.20	$341.95	$678.75	$627.10	$297.40	$409.15
55	$189.50	$213.50	$305.50	$346.75	$687.00	$635.60	$301.55	$415.30
56	$191.60	$215.60	$309.80	$351.55	$695.25	$644.10	$305.70	$421.45
57	$193.70	$217.70	$314.10	$356.35	$703.50	$652.60	$309.85	$427.60
58	$195.80	$219.80	$318.40	$361.15	$711.75	$661.10	$314.00	$433.75
59	$197.90	$221.90	$322.70	$365.95	$720.00	$669.60	$318.15	$439.90
60	$200.00	$224.00	$327.00	$370.75	$728.25	$678.10	$322.30	$446.05
61	$202.10	$226.10	$331.30	$375.55	$736.50	$686.60	$326.45	$452.20
62	$204.20	$228.20	$335.60	$380.35	$744.75	$695.10	$330.60	$458.35
63	$206.30	$230.30	$339.90	$385.15	$753.00	$703.60	$334.75	$464.50
64	$208.40	$232.40	$344.20	$389.95	$761.25	$712.10	$338.90	$470.65
65	$210.50	$234.50	$348.50	$394.75	$769.50	$720.60	$343.05	$476.80
66	$212.60	$236.60	$352.80	$399.55	$777.75	$729.10	$347.20	$482.95
67	$214.70	$238.70	$357.10	$404.35	$786.00	$737.60	$351.35	$489.10
68	$216.80	$240.80	$361.40	$409.15	$794.25	$746.10	$355.50	$495.25
69	$218.90	$242.90	$365.70	$413.95	$802.50	$754.60	$359.65	$501.40
70	$221.00	$245.00	$370.00	$418.75	$810.75	$763.10	$363.80	$507.55

EXPRESS MAIL INTERNATIONAL

Weight Not Over (Pounds)	Rate Group 1	Rate Group 2	Rate Group 3	Rate Group 4	Rate Group 5	Rate Group 6	Rate Group 7	Rate Group 8	Rate Group 9	Rate Group 10
0.5	$22.00	$22.00	$25.00	$25.00	$25.00	$25.00	$25.00	$25.00	$25.00	$19.75
1	$23.25	$25.50	$28.00	$27.50	$30.50	$27.00	$32.00	$32.00	$30.00	$22.50
2	$25.00	$30.00	$32.00	$30.50	$34.75	$31.00	$37.00	$36.85	$34.75	$25.25
3	$26.75	$34.50	$36.00	$33.50	$39.00	$35.00	$42.00	$41.70	$39.50	$28.75
4	$28.50	$39.00	$40.00	$36.50	$43.25	$39.00	$47.00	$46.55	$44.25	$32.25
5	$30.25	$43.50	$44.00	$39.50	$47.50	$43.00	$52.00	$51.40	$49.00	$35.50
6	$32.00	$46.10	$47.85	$43.00	$51.25	$47.00	$57.00	$56.40	$53.75	$39.00
7	$33.75	$48.70	$51.70	$46.50	$55.00	$51.00	$62.00	$61.40	$58.50	$42.50
8	$35.50	$51.30	$55.55	$50.00	$58.75	$55.00	$67.00	$66.40	$63.25	$46.00
9	$37.25	$53.90	$59.40	$53.50	$62.50	$59.00	$72.00	$71.40	$68.00	$49.50
10	$39.00	$56.50	$63.25	$57.00	$66.25	$63.00	$77.00	$76.40	$72.75	$52.25
11	$41.50	$59.10	$67.10	$61.10	$70.00	$68.25	$82.35	$81.40	$78.00	$55.75
12	$44.00	$61.70	$70.95	$65.20	$73.75	$73.50	$87.70	$86.40	$83.25	$59.25
13	$46.50	$64.30	$74.80	$69.30	$77.50	$78.75	$93.05	$91.40	$88.50	$62.50
14	$49.00	$66.90	$78.65	$73.40	$81.25	$84.00	$98.40	$96.40	$93.75	$66.00

EXPRESS MAIL INTERNATIONAL—Continued

Weight Not Over (Pounds)	Rate Group 1	Rate Group 2	Rate Group 3	Rate Group 4	Rate Group 5	Rate Group 6	Rate Group 7	Rate Group 8	Rate Group 9	Rate Group 10
15	$51.50	$69.50	$82.50	$77.50	$85.00	$89.25	$103.75	$101.40	$99.00	$69.25
16	$54.00	$72.10	$86.35	$81.60	$88.75	$94.50	$109.10	$106.40	$104.25	$72.75
17	$56.50	$74.70	$90.20	$85.70	$92.50	$99.75	$114.45	$111.40	$109.50	$76.00
18	$59.00	$77.30	$94.05	$89.80	$96.25	$105.00	$119.80	$116.40	$114.75	$79.50
19	$61.50	$79.90	$97.90	$93.90	$100.00	$110.25	$125.15	$121.40	$120.00	$82.75
20	$64.00	$82.50	$101.75	$98.00	$103.75	$115.50	$130.50	$126.40	$125.25	$86.25
21	$66.50	$85.10	$105.60	$102.10	$107.50	$120.75	$135.85	$131.40	$130.50	$89.75
22	$69.00	$87.70	$109.45	$106.20	$111.25	$126.00	$141.20	$136.40	$135.75	$93.00
23	$71.50	$90.30	$113.30	$110.30	$115.00	$131.25	$146.55	$141.40	$141.00	$96.50
24	$74.00	$92.90	$117.15	$114.40	$118.75	$136.50	$151.90	$146.40	$146.25	$99.75
25	$76.50	$95.50	$121.00	$118.50	$122.50	$141.75	$157.25	$151.40	$151.50	$103.25
26	$79.00	$98.10	$124.85	$122.60	$126.25	$147.00	$162.60	$156.40	$156.75	$106.50
27	$81.50	$100.70	$128.70	$126.70	$130.00	$152.25	$167.95	$161.40	$162.00	$110.00
28	$84.00	$103.30	$132.55	$130.80	$133.75	$157.50	$173.30	$166.40	$167.25	$113.25
29	$86.50	$105.90	$136.40	$134.90	$137.50	$162.75	$178.65	$171.40	$172.50	$116.75
30	$89.00	$108.50	$140.25	$139.00	$141.25	$168.00	$184.00	$176.40	$177.75	$120.25
31	$91.50	$111.10	$144.10	$143.10	$145.00	$173.25	$189.35	$181.40	$183.00	$123.50
32	$94.00	$113.70	$147.95	$147.20	$148.75	$178.50	$194.70	$186.40	$188.25	$127.00
33	$96.50	$116.30	$151.80	$151.30	$152.50	$183.75	$200.05	$191.40	$193.50	$130.25
34	$99.00	$118.90	$155.65	$155.40	$156.25	$189.00	$205.40	$196.40	$198.75	$133.75
35	$101.50	$121.50	$159.50	$159.50	$160.00	$194.25	$210.75	$201.40	$204.00	$137.00
36	$104.00	$124.10	$163.35	$163.60	$163.75	$199.50	$216.10	$206.40	$209.25	$140.50
37	$106.50	$126.70	$167.20	$167.70	$167.50	$204.75	$221.45	$211.40	$214.50	$144.00
38	$109.00	$129.30	$171.05	$171.80	$171.25	$210.00	$226.80	$216.40	$219.75	$147.25
39	$111.50	$131.90	$174.90	$175.90	$175.00	$215.25	$232.15	$221.40	$225.00	$150.75
40	$114.00	$134.50	$178.75	$180.00	$178.75	$220.50	$237.50	$226.40	$230.25	$154.00
41	$116.50	$137.10	$182.60	$184.10	$182.50	$225.75	$242.85	$231.40	$235.50	$157.50
42	$119.00	$139.70	$186.45	$188.20	$186.25	$231.00	$248.20	$236.40	$240.75	$160.75
43	$121.50	$142.30	$190.30	$192.30	$190.00	$236.25	$253.55	$241.40	$246.00	$164.25
44	$124.00	$144.90	$194.15	$196.40	$193.75	$241.50	$258.90	$246.40	$251.25	$167.50
45	$126.50	$147.50	$198.00	$200.50	$197.50	$246.75	$264.25	$251.40	$256.50	$171.00
46	$129.00	$150.10	$201.85	$204.60	$201.25	$252.00	$269.60	$256.40	$261.75	$174.50
47	$131.50	$152.70	$205.70	$208.70	$205.00	$257.25	$274.95	$261.40	$267.00	$177.75
48	$134.00	$155.30	$209.55	$212.80	$208.75	$262.50	$280.30	$266.40	$272.25	$181.25
49	$136.50	$157.90	$213.40	$216.90	$212.50	$267.75	$285.65	$271.40	$277.50	$184.50
50	$139.00	$160.50	$217.25	$221.00	$216.25	$273.00	$291.00	$276.40	$282.75	$188.00
51	$141.50	$163.10	$221.10	$225.10	$220.00	$278.25	$296.35	$281.40	$288.00	$191.25
52	$144.00	$165.70	$224.95	$229.20	$223.75	$283.50	$301.70	$286.40	$293.25	$194.75
53	$146.50	$168.30	$228.80	$233.30	$227.50	$288.75	$307.05	$291.40	$298.50	$198.00
54	$149.00	$170.90	$232.65	$237.40	$231.25	$294.00	$312.40	$296.40	$303.75	$201.50
55	$151.50	$173.50	$236.50	$241.50	$235.00	$299.25	$317.75	$301.40	$309.00	$205.00
56	$154.00	$176.10	$240.35	$245.60	$238.75	$304.50	$323.10	$306.40	$314.25	$208.25
57	$156.50	$178.70	$244.20	$249.70	$242.50	$309.75	$328.45	$311.40	$319.50	$211.75
58	$159.00	$181.30	$248.05	$253.80	$246.25	$315.00	$333.80	$316.40	$324.75	$215.00
59	$161.50	$183.90	$251.90	$257.90	$250.00	$320.25	$339.15	$321.40	$330.00	$218.50
60	$164.00	$186.50	$255.75	$262.00	$253.75	$325.50	$344.50	$326.40	$335.25	$221.75
61	$166.50	$189.10	$259.60	$266.10	$257.50	$330.75	$349.85	$331.40	$340.50	$225.25
62	$169.00	$191.70	$263.45	$270.20	$261.25	$336.00	$355.20	$336.40	$345.75	$228.75
63	$171.50	$194.30	$267.30	$274.30	$265.00	$341.25	$360.55	$341.40	$351.00	$232.00
64	$174.00	$196.90	$271.15	$278.40	$268.75	$346.50	$365.90	$346.40	$356.25	$235.50
65	$176.50	$199.50	$275.00	$282.50	$272.50	$351.75	$371.25	$351.40	$361.50	$238.75
66	$179.00	$202.10	$278.85	$286.60	$276.25	$357.00	$376.60	$356.40	$366.75	$242.25
67	—	—	—	$290.70	—	$362.25	$381.95	$361.40	$372.00	$245.50
68	—	—	—	$294.80	—	$367.50	$387.30	$366.40	$377.25	$249.00
69	—	—	—	$298.90	—	$372.75	$392.65	$371.40	$382.50	$252.25
70	—	—	—	$303.00	—	$378.00	$398.00	$376.40	$387.75	$255.75

EXPRESS MAIL INTERNATIONAL—FLAT-RATE ENVELOPE

Destination country	Envelope
Canada & Mexico	$22.00
All other countries	$25.00

PRIORITY MAIL INTERNATIONAL

Weight not over (pounds)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8	Rate group 9	Rate group 10
1	$16.00	$16.50	$21.00	$18.50	$20.00	$18.50	$21.00	$20.00	$18.00	$10.20
2	$17.30	$19.75	$25.25	$21.75	$24.00	$22.70	$25.50	$24.00	$21.60	$12.10
3	$18.60	$23.00	$29.50	$25.00	$28.00	$26.90	$30.00	$28.00	$25.20	$14.30
4	$19.90	$26.25	$33.75	$28.25	$32.00	$31.10	$34.50	$32.00	$28.80	$16.60
5	$21.20	$29.50	$38.00	$31.50	$36.00	$35.30	$39.00	$36.00	$32.40	$18.70
6	$22.50	$31.80	$41.60	$34.65	$39.30	$39.90	$43.50	$40.35	$35.90	$20.90
7	$23.80	$34.10	$45.20	$37.80	$42.60	$44.50	$48.00	$44.70	$39.40	$23.10
8	$25.10	$36.40	$48.80	$40.95	$45.90	$49.10	$52.50	$49.05	$42.90	$25.40
9	$26.40	$38.70	$52.40	$44.10	$49.20	$53.70	$57.00	$53.40	$46.40	$27.70
10	$27.70	$41.00	$56.00	$47.25	$52.50	$58.30	$61.50	$57.75	$49.90	$29.90
11	$29.10	$43.30	$59.60	$50.85	$55.80	$62.90	$65.85	$62.10	$53.40	$32.20
12	$30.50	$45.60	$63.20	$54.45	$59.10	$67.50	$70.20	$66.45	$56.90	$34.40
13	$31.90	$47.90	$66.80	$58.05	$62.40	$72.10	$74.55	$70.80	$60.40	$36.60
14	$33.30	$50.20	$70.40	$61.65	$65.70	$76.70	$78.90	$75.15	$63.90	$38.70
15	$34.70	$52.50	$74.00	$65.25	$69.00	$81.30	$83.25	$79.50	$67.40	$40.90
16	$36.10	$54.80	$77.60	$68.85	$72.30	$85.90	$87.60	$83.85	$70.90	$42.90
17	$37.50	$57.10	$81.20	$72.45	$75.60	$90.50	$91.95	$88.20	$74.40	$44.85
18	$38.90	$59.40	$84.80	$76.05	$78.90	$95.10	$96.30	$92.55	$77.90	$46.85
19	$40.30	$61.70	$88.40	$79.65	$82.20	$99.70	$100.65	$96.90	$81.40	$48.85
20	$41.70	$64.00	$92.00	$83.25	$85.50	$104.30	$105.00	$101.25	$84.90	$50.80
21	$43.10	$66.30	$95.60	$86.85	$88.80	$108.90	$109.35	$105.60	$88.40	$52.80
22	$44.50	$68.60	$99.20	$90.45	$92.10	$113.50	$113.70	$109.95	$91.90	$54.80
23	$45.90	$70.90	$102.80	$94.05	$95.40	$118.10	$118.05	$114.30	$95.40	$56.75
24	$47.30	$73.20	$106.40	$97.65	$98.70	$122.70	$122.40	$118.65	$98.90	$58.75
25	$48.70	$75.50	$110.00	$101.25	$102.00	$127.30	$126.75	$123.00	$102.40	$60.70
26	$50.10	$77.80	$113.60	$104.85	$105.30	$131.90	$131.10	$127.35	$105.90	$62.65
27	$51.50	$80.10	$117.20	$108.45	$108.60	$136.50	$135.45	$131.70	$109.40	$64.65
28	$52.90	$82.40	$120.80	$112.05	$111.90	$141.10	$139.80	$136.05	$112.90	$66.60
29	$54.30	$84.70	$124.40	$115.65	$115.20	$145.70	$144.15	$140.40	$116.40	$68.55
30	$55.70	$87.00	$128.00	$119.25	$118.50	$150.30	$148.50	$144.75	$119.90	$70.55
31	$57.10	$89.30	$131.60	$122.85	$121.80	$154.90	$152.85	$149.10	$123.40	$72.50
32	$58.50	$91.60	$135.20	$126.45	$125.10	$159.50	$157.20	$153.45	$126.90	$74.45
33	$59.90	$93.90	$138.80	$130.05	$128.40	$164.10	$161.55	$157.80	$130.40	$76.40
34	$61.30	$96.20	$142.40	$133.65	$131.70	$168.70	$165.90	$162.15	$133.90	$78.35
35	$62.70	$98.50	$146.00	$137.25	$135.00	$173.30	$170.25	$166.50	$137.40	$80.30
36	$64.10	$100.80	$149.60	$140.85	$138.30	$177.90	$174.60	$170.85	$140.90	$82.40
37	$65.50	$103.10	$153.20	$144.45	$141.60	$182.50	$178.95	$175.20	$144.40	$84.50
38	$66.90	$105.40	$156.80	$148.05	$144.90	$187.10	$183.30	$179.55	$147.90	$86.65
39	$68.30	$107.70	$160.40	$151.65	$148.20	$191.70	$187.65	$183.90	$151.40	$88.70
40	$69.70	$110.00	$164.00	$155.25	$151.50	$196.30	$192.00	$188.25	$154.90	$90.80
41	$71.10	$112.30	$167.60	$158.85	$154.80	$200.90	$196.35	$192.60	$158.40	$92.85
42	$72.50	$114.60	$171.20	$162.45	$158.10	$205.50	$200.70	$196.95	$161.90	$94.95
43	$73.90	$116.90	$174.80	$166.05	$161.40	$210.10	$205.05	$201.30	$165.40	$97.05
44	$75.30	$119.20	$178.40	$169.65	$164.70	$214.70	$209.40	$205.65	$168.90	$99.10
45	$76.70	—	$182.00	$173.25	$168.00	$219.30	$213.75	$210.00	$172.40	$101.20
46	$78.10	—	$185.60	$176.85	$171.30	$223.90	$218.10	$214.35	$175.90	$103.25
47	$79.50	—	$189.20	$180.45	$174.60	$228.50	$222.45	$218.70	$179.40	$105.35
48	$80.90	—	$192.80	$184.05	$177.90	$233.10	$226.80	$223.05	$182.90	$107.45
49	$82.30	—	$196.40	$187.65	$181.20	$237.70	$231.15	$227.40	$186.40	$109.50
50	$83.70	—	$200.00	$191.25	$184.50	$242.30	$235.50	$231.75	$189.90	$111.55
51	$85.10	—	$203.60	$194.85	$187.80	$246.90	$239.85	$236.10	$193.40	$113.65
52	$86.50	—	$207.20	$198.45	$191.10	$251.50	$244.20	$240.45	$196.90	$115.70
53	$87.90	—	$210.80	$202.05	$194.40	$256.10	$248.55	$244.80	$200.40	$117.85

PRIORITY MAIL INTERNATIONAL—Continued

Weight not over (pounds)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8	Rate group 9	Rate group 10
54	$89.30	—	$214.40	$205.65	$197.70	$260.70	$252.90	$249.15	$203.90	$119.90
55	$90.70	—	$218.00	$209.25	$201.00	$265.30	$257.25	$253.50	$207.40	$122.00
56	$92.10	—	$221.60	$212.85	$204.30	$269.90	$261.60	$257.85	$210.90	$124.05
57	$93.50	—	$225.20	$216.45	$207.60	$274.50	$265.95	$262.20	$214.40	$126.15
58	$94.90	—	$228.80	$220.05	$210.90	$279.10	$270.30	$266.55	$217.90	$128.20
59	$96.30	—	$232.40	$223.65	$214.20	$283.70	$274.65	$270.90	$221.40	$130.30
60	$97.70	—	$236.00	$227.25	$217.50	$288.30	$279.00	$275.25	$224.90	$132.35
61	$99.10	—	$239.60	$230.85	$220.80	$292.90	$283.35	$279.60	$228.40	$134.45
62	$100.50	—	$243.20	$234.45	$224.10	$297.50	$287.70	$283.95	$231.90	$136.50
63	$101.90	—	$246.80	$238.05	$227.40	$302.10	$292.05	$288.30	$235.40	$138.65
64	$103.30	—	$250.40	$241.65	$230.70	$306.70	$296.40	$292.65	$238.90	$140.70
65	$104.70	—	$254.00	$245.25	$234.00	$311.30	$300.75	$297.00	$242.40	$142.80
66	$106.10	—	$257.60	$248.85	$237.30	$315.90	$305.10	$301.35	$245.90	$144.85
67	—	—	—	$252.45	$240.60	$320.50	$309.45	$305.70	$249.40	$146.95
68	—	—	—	$256.05	$243.90	$325.10	$313.80	$310.05	$252.90	$149.00
69	—	—	—	$259.65	$247.20	$329.70	$318.15	$314.40	$256.40	$151.10
70	—	—	—	$263.25	$250.50	$334.30	$322.50	$318.75	$259.90	$153.20

PRIORITY MAIL INTERNATIONAL—FLAT-RATE ENVELOPE [1]

Destination country	Envelope
Canada & Mexico	$9.00
All other countries	$11.00

[1] First-Class Mail International only.

PRIORITY MAIL INTERNATIONAL—FLAT-RATE BOX

Destination country	Box
Canada & Mexico	$23.00
All other countries	$37.00

ONLINE DISCOUNTS

Service	Global Express Guaranteed	Express Mail International	Priority Mail International
Discount	10%	8%	5%

FIRST-CLASS MAIL INTERNATIONAL

Weight Not Over (oz.)	RATE GROUPS					
	1	2	3	4	5	6
1.0	$0.69	$0.69	$0.90	$0.90	$0.90	$0.61
2.0	$1.00	$1.12	$1.80	$1.80	$1.80	$1.09
3.0	$1.31	$1.55	$2.70	$2.70	$2.70	$1.57
4.0	$1.62	$1.98	$3.60	$3.60	$3.60	$2.05
5.0	$1.93	$2.41	$4.50	$4.50	$4.50	$2.53
6.0	$2.24	$2.84	$5.40	$5.40	$5.40	$3.01
7.0	$2.55	$3.27	$6.30	$6.30	$6.30	$3.49
8.0	$2.86	$3.70	$7.20	$7.20	$7.20	$3.97
12.0	$3.76	$5.10	$8.80	$8.65	$8.65	$5.15
16.0	$4.66	$6.50	$10.40	$10.10	$10.10	$6.21
20.0	$5.56	$7.90	$12.00	$11.55	$11.55	$7.27
24.0	$6.46	$9.30	$13.60	$13.00	$13.00	$8.33
28.0	$7.36	$10.70	$15.20	$14.45	$14.45	$9.39
32.0	$8.26	$12.10	$16.80	$15.90	$15.90	$10.45
36.0	$9.16	$13.50	$18.40	$17.35	$17.35	$11.51
40.0	$10.06	$14.90	$20.00	$18.80	$18.80	$12.57
44.0	$10.96	$16.30	$21.60	$20.25	$20.25	$13.63

FIRST-CLASS MAIL INTERNATIONAL—Continued

Weight Not Over (oz.)	RATE GROUPS					
	1	2	3	4	5	6
48.0	$11.86	$17.70	$23.20	$21.70	$21.70	$14.69
52.0	$12.76	$19.10	$24.80	$23.15	$23.15	$15.75
56.0	$13.66	$20.50	$26.40	$24.60	$24.60	$16.81
60.0	$14.56	$21.90	$28.00	$26.05	$26.05	$17.87
64.0	$15.46	$23.30	$29.60	$27.50	$27.50	$18.93

POSTAL CARDS AND POSTCARDS

Destination Country	Postage Rate
Canada and Mexico	$0.69
Marshall Islands and Micronesia	$0.52
All Other Countries	$0.90

IPA AND IPA M-BAGS

RATE GROUPS	Per Piece	Full Service Per Lb.		ISC Drop Shipment Per Lb.		M-Bag 5–10 Lb. Per Lb. Rate
		Regular	M-Bag [1]	Regular	M-Bag [1]	
RG 1 (Canada)	$0.33	$4.55	$2.10	$3.55	$2.00	$0.45
RG 2 (Mexico)	$0.15	$6.10	$2.70	$5.10	$2.60	$0.60
RG 3	$0.32	$7.50	$3.60	$6.50	$3.35	$1.00
RG 4	$0.32	$7.70	$5.15	$6.70	$5.00	$1.75
RG 5	$0.15	$6.50	$4.40	$5.50	$4.15	$1.15
RG 6	$0.15	$5.80	$4.20	$4.80	$3.95	$0.80
RG 7	$0.15	$7.50	$4.95	$6.50	$4.70	$1.15
RG 8	$0.12	$8.00	$4.85	$7.00	$4.60	$1.35
RG 9 (Australia)	$0.27	$8.25	$6.25	$7.25	$6.00	$1.85
Worldwide	$0.25	$8.50	—	$7.50	—	—

[1] ≥11 pound M-Bag rate.

ISAL AND ISAL M-BAGS

INTERNATIONAL SURFACE AIRLIFT

RATE GROUPS	Per Piece Rate	Full Service Per Lb.		Direct Shipment Per Lb.		ISC Drop Shipment Per Lb.		M-Bag 5–10 Lb. Per Lb. Rate
		Regular	M-Bag *	Regular	M-Bag *	Regular	M-Bag *	
RG 1 (Canada)	$0.32	$3.20	$1.60	$2.70	$1.60	$2.20	$1.50	$0.20
RG 2 (Mexico)	$0.15	$5.15	$1.70	$4.65	$1.70	$4.15	$1.60	$0.23
RG 3	$0.30	$4.00	$2.00	$3.50	$2.00	$3.00	$1.75	$0.33
RG 4	$0.32	$4.35	$2.80	$3.85	$2.80	$3.35	$2.65	$0.43
RG 5	$0.15	$5.45	$2.35	$4.95	$2.35	$4.45	$2.10	$0.41
RG 6	$0.15	$5.55	$2.35	$5.05	$2.35	$4.55	$2.10	$0.36
RG 7	$0.15	$5.45	$2.60	$4.95	$2.60	$4.45	$2.35	$0.40
RG 8	$0.12	$6.60	$3.25	$6.10	$3.25	$5.60	$3.00	$0.60
RG 9 (Australia)	$0.22	$4.45	$2.75	$3.95	$2.75	$3.45	$2.75	$0.43

≥11 pound M-Bag rate.

EXTRA SERVICES FEES

Description	Fee [1]
International Postal Money Orders	$3.85
International Reply Coupons	2.00
International Business Reply Card	.90
International Business Reply Envelope (up to 2 oz)	1.40
Customs Clearance and Delivery Fee	5.35

[1] Fees not tied to domestic fees.

INSURANCE

Insurance		
Priority Mail International Insurance Not Over	Canada	All other countries
$50	1.65	$2.40
$100	3.00	3.15
$200	3.75	3.90
$300	4.50	4.65
$400	5.25	5.40
$500	6.00	6.15
$600	46.75	6.90
$675	7.50	(1)
$700	(1)	7.65
Add'l $100	(1)	0.75

[1] Not applicable.

3. Revise the following section of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

* * * * *

1 International Mail Services

110 General Information

* * * * *

115 Official Correspondence

115 Communicating With Headquarters

* * * * *

115.13 Transportation and Distribution

[*Revise the first sentence of 115.13 as follows:*]

Correspondence concerning the transportation of international civil and military mail, including the following, should be addressed to:

* * * * *

[*Revise item e as follows:*]

e. Internal conveyance, terminal, and transit charges.

* * * * *

120 Preparation for Mailing

* * * * *

123 Customs Forms

123.1 General

* * * * *

[*Revise the Note for 123.1 as follows:*]

Note: The current edition of PS Forms 2976 is January 2004; the current edition of PS Form 2976–A is January 2006; the current edition of PS Form 2976–E is September 2006. Except as provided in 123.3, mailers must present at the time of mailing a fully completed Sender's Declaration (the Post Office copy of PS Form 2976, which specifies both the sender's name and address and the addressee's name and address.

* * * * *

123.6 Required Usage

123.61 Conditions

* * * * *

Exhibited 123.61

Customs Declaration Form Usage

[*Revise Exhibit 123.61 as follows:*]

* * * * *

Mail category	Declared value	Required form	Comment
Global Express Guaranteed	All values	Mailing label (item 11FGG1).	
Express Mail International	All values	2976 or 2976–A unless otherwise specified.	See Note 3 at the bottom of this exhibit and the Individual Country Listings.
First-Class Mail International items that:	N/A	None	A known mailer, as defined in *123.62*, may be exempt from affixing customs forms to nondutiable mailpieces that weigh 16 ounces or more.
Weigh less than 16 ounces and do not have potentially dutiable contents.			
Weigh 16 ounces or more, do not have potentially dutiable contents, and are entered by a known mailer.			
First-Class Mail International items and Priority Mail International envelopes that:			
Weigh less than 16 ounces and do not have potentially dutiable contents.	Under $400	2976* 2976–A*	
Weigh 16 ounces or more, regardless of their contents.	$400 or more regardless of their content	2976–A*	
Priority Mail International envelopes that:	2976	2976	Do not use PS Form 2976–A on Flat Rate envelopes.
Weigh less than 16 ounces and do not have potentially dutiable contents.			

Mail category	Declared value	Required form	Comment
Weigh 16 ounces or more, do not have potentially dutiable contents, and are entered by a known mailer.	.....	.....	
Priority Mail International parcels and flat-rate Box items that:	Regardless of value	2976–A with 2976–E	Do not use PS Form 2976 (green label) on Priority Mail International flat-rate boxes.
Weigh less than 16 ounces and do not have potentially dutiable contents.	.....	.....	
Weigh 16 ounces or more, do not have potentially dutiable contents, and are entered by a known mailer.	.....	.....	
Free matter for the blind	Under $400 ..... $400 or more	2976 * ..... 2976–A* with 2976–E*	
M-bag ..... (Note: An M-bag requires a customs form when it contains potentially dutiable printed matter, admissible merchandise items as defined in *261.22* or some combination thereof.).	Under $400 ..... $400 or more	2976 * 2976–A*	

*Placement of forms: Use PS Form 2976 (green label) for First-Class Mail International items under $400 in value and affix it to the outside of the package. If the value of the contents is $400 or more, affix the upper portion of PS Form 2976 (green label) (cut on dotted line and discard the lower portion) to the outside of the package, complete a separate PS Form 2976–A, and enclose the form set inside the package.

Notes: *[Revise notes 1 and 3 as follows:]*

1. See 233.3 for the customs form requirements that specifically pertain to Priority Mail International items.

* * * * *

3. Express Mail International shipments that contain nondutiable correspondence, documents, or commercial papers are subject to the following customs form requirements:

a. When an Express Mail International shipment weighs less than 16 ounces, the determination as to whether or not to affix PS Form 2976 depends on the conditions of the destination country. Some countries require that a customs form be affixed to Express Mail International shipments regardless of the weight or contents. Other countries require that a ''BUSINESS PAPERS'' endorsement be applied to the package. See the Individual Country Listings for each country's specification.

b. When the Express Mail International shipment weighs 16 ounces or more, PS Form 2976 or PS Form 2976–A is required.

* * * * *

123.72 PS Form 2976–A, Customs Declaration and Dispatch Note—CP 72

123.721 Sender's Preparation of PS Form 2976–A

* * * * *

o. Affix PS Form 2976–A according to the class of mail, as follows:

[Revise item o (1) as follows:]

(1) For Priority Mail International, first allow the Postal Service employee to complete PS Form 2976–A as described in *123.722* and then place the form set inside PS Form 2976–E (plastic envelope) and affix it to the outside of the package. Do not use PS Form 2976–A for the Priority Mail International flat-rate envelope. Use PS Form 2976.

[Revise item o (2) as follows]

(2) For a First-Class Mail International item valued at $400 or more, or if you do not want to list the contents on the outside wrapper of a First-Class Mail International item, affix the upper portion of PS Form 2976 (green label) (cut on dotted line and discard the lower portion) to the address side of the package, complete PS Form 2976–A, and enclose the form set inside the package.

* * * * *

123.722 Postal Service Employee's Acceptance of PS Form 2976–A

* * * * *

[Delete item e and renumber current items f and g as items e and f.]

* * * * *

130 Mailability

* * * * *

134 Valuable Articles

134.1 List of Articles

[Revise 134.1 as follows:]

The following valuable articles may be sent only by registered First-Class Mail International, or by insured Priority Mail International shipments and are not mailable in Express Mail International or ordinary Priority Mail International shipments (see 221.2 and 237):

* * * * *

135 Mailable Dangerous Goods

135.1 Biological Substances

135.11 General Conditions

[Revise 135.11 as follows:]

Infectious substances are acceptable in the international mail subject to the provisions of DMM 601 and under the additional conditions specified in subsections below.

* * * * *

135.2 Authorization

* * * * *

135.22 Requests for Authorization

[Revise the first sentence of 135.22 to as follows:]

Qualifying institutions wishing to mail packages containing biological substances must submit a written request on their organizational letterhead to the following address:

* * * * *

135.4 Marking

135.41 Infectious Biological Substances

[Revise the first sentence of 135.41 as follows:]

Items that contain infectious biological substances should be identified by a black and white diamond-shaped label with the division number 6.2 in the bottom, in addition to the Etiologic Agents/Biohazard Material label. * * *

* * * * *

135.42 Noninfectious Biological Substances

[Revise the first sentence of 135.42 as follows:]

Items that contain noninfectious biological substances must be identified by a violet-colored label bearing the prescribed symbol and French wording for perishable biological materials: ''MATIERES BIOLOGIQUES PERISSABLES.''

* * * * *

135.44 Shipper's Declaration

[Revise 135.42 as follows:]

First-Class Mail International items that contain perishable biological substances must be given careful yet expeditious handling from receipt through dispatch.

135.5 Handling and Dispatch

135.51 Biological Substances

[Revise 135.51 as follows:]

Items that contain perishable biological substances must be given careful yet expeditious handling from receipt through dispatch.

* * * * *

135.6 Radioactive Materials

* * * * *

[Revise item a as follows:]

a. Shipments may be sent only by registered First-Class Mail International.

* * * * *

139 Perishable Matter

139.1 Animals

* * * * *

c. Parasites and predators of injurious insects, if the following conditions are met:

* * * * *

[Revise item c(4) as follows:]

(4) They are sent by First-Class Mail International in letter packages or small packets.

* * * * *

139.3 Eggs

139.31 Restrictions

[Revise 139.31 as follows:]

Eggs may be sent only by Priority Mail International. * * *

* * * * *

140 International Mail Categories

141 Definitions

141.1 General

[Revise 141.1 as follows:]

There are four principal categories of international mail that are primarily differentiated from one another by speed of service. They are Global Express Guaranteed® (GXG)®, Express Mail International service, First-Class Mail International service, and Priority Mail International.

* * * * *

[Revise the title and text of 141.3 as follows:]

141.3 Express Mail International

The next level of service, in terms of speed and value-added features, is Express Mail International. Express Mail International is an expedited mail service that can be used to send documents and merchandise to most of the country locations that are individually listed in this publication. Express Mail International insurance coverage against loss, damage, or rifling, up to a maximum of $100, is provided at no additional charge. Additional merchandise insurance coverage up to $5,000 may be purchased at the sender's option. However, document reconstruction insurance coverage is limited to a maximum of $100 per shipment. Return receipt service is available upon request, at no additional charge, for Express Mail International shipments that are sent to a limited number of countries. See *221.4.* Country-specific maximum weight limits range from 22 pounds to 70 pounds. See the Individual Country Listings. Although Express Mail International shipments are supposed to receive the most expeditious handling available in the destination country, they are not subject to a postage refund guarantee if a delivery delay occurs. Express Mail International with Guarantee service—which offers a date-certain, money-back guarantee—is available to select destinations; see IMM *220* and the Individual Country Listings to determine the availability of such service.

[Revise the title and text of 141.4 as follows:]

141.4 First-Class Mail International

First-Class Mail International is a service that provides customers with a reliable and economical means of sending correspondence, documents, and lightweight merchandise to foreign destinations that are listed in 231.4. First-Class Mail International items must not exceed 4 pounds and they are subject to the provisions of the Universal Postal Union letter-post Convention. First-Class Mail International items may contain any mailable matter that is not prohibited by the destination country. At the sender's option, extra services, such as registry and return receipt may be added on a country-specific basis.

[Revise 141.5 as follows:]

141.5 Priority Mail International

Priority Mail International is governed by the parcels provisions of the UPU Convention and the Parcels Regulations. That classification is primarily designed to accommodate larger and heavier shipments, whose size and/or weight transcend the established limitations for First-Class Mail International. It also affords senders the opportunity to obtain optional mailing services, such as insurance coverage and return receipt, which would otherwise be unavailable.

[Delete 141.6.]

* * * * *

143 Official Mail

* * * * *

143.4 General Secretariat of the Organization of American States (OAS)

[Revise items a and b as follows:]

a. Unregistered First-Class Mail International items bearing the return address of the OAS General Secretariat and weighing not more than 4 pounds are accepted without postage when addressed to the OAS member countries listed in *143.4c.*

b. Airmail service for items other than First-Class Mail International with extra services may not be provided for OAS General Secretariat official mail without the prepayment of postage or the fee for the extra service requested.

* * * * *

143.5 Pan American Sanitary Bureau Mail

[Revise items a and b as follows:]

a. Unregistered First-Class Mail International items bearing the return address of the bureau and weighing not more than 4 pounds, are accepted without postage affixed when addressed to an OAS member country listed in *143.4c* or to Cuba.

b. Items with the bureau return address that are sent other than First-Class Mail International or that request extra services must prepay all postage and fees.

150 Postage

* * * * *

152 Payment Methods

* * * * *

152.2 Stamps

* * * * *

[Delete item c, and re-letter current item d as new item c.]

* * * * *

152.3 Permit Imprint

152.31 Conditions of Use

[Revise 152.31 as follows:]

Postage may be paid by permit imprint, subject to the general conditions stated in DMM 124, 604, and 705. Postage charges are computed on PS Form 3700. This postage payment method may be used for postage and extra service fees for First-Class Mail International and Priority Mail International.

* * * * *

2 Conditions for Mailing

210 Global Express Guaranteed

211 Description

* * * * *

[Revise the title of 211.2 as follows:]

211.2 Eligibility

* * * * *

[Insert new 211.3 as follows:]

211.3 Global Express Guaranteed Service

Global Express Guaranteed (GXG) service may be used for shipments that contain documents and general correspondence for which no duty is assessed by the customs authority of the destinating country, or for shipments that contain non-documents or other merchandise for which duty may be assessed by the customs authority of the destinating country. Document packages are sealed against inspection by the Postal Service or other U.S. agencies and authorities. Shipments that contain non-documents or other merchandise for which duty may be assessed by the customs authority of the destinating country are not sealed against inspection under 39 U.S.C. 3623(d). These shipments are also subject to inspection by the Postal Service and its designated agents for purposes of aviation (air) security, and to determine that the contents are eligible for mailing and that the contents are adequately declared on the Global Express Guaranteed Air Waybill/Shipping Invoice to permit expedited customs clearance. All shipments (documents and non-documents) may also be subject to inspection in the destinating country for purposes of compliance with the customs requirements of the destinating country. See the listing of destinating countries in 213 for specific availability.

[Delete current 212.2.]

[Insert current 216 title as new 212 title, and revise as follows:]

212 Postage Rates

[Insert current 216.1 (with new rates and rate groups) as new 212.1, and change title to ''Global Express Guaranteed Service Rates/Groups''.]

[Delete current 216.2 in its entirety.]

[Insert current 216.3 in its entirety as new 212.2.]

[Revise new 212.252 (current 216.352 item a by changing ''$13.25'' to ''$14.25.'']

[Revise title of new 212.261(current 216.361) to ''Global Express Guaranteed with Standard Web Discount'' (Discounts apply only to customers who pay for postage online.) New table includes new prices and rate groups.]

[Delete current 216.362 in its entirety.]

[Change title in new 212.262 (current 216.363) to ''Global Express Guaranteed With 5-Piece Web Discount (Discounts apply only to customers who pay for postage online.) New table includes new prices and rate groups.]

[Delete current 216.364 in its entirety.]

[Change title in new 212.263 (current 216.365) to ''Global Express Guaranteed With 12-Piece Web Discount (Discounts apply only to customers who pay for postage online.) New table includes new prices and rate groups.]

[Delete current 216.366 in its entirety.]

[Change title in new 212.264 (current 216.367) to ''Global Express Guaranteed With 20-Piece Web Discount (Discounts apply only to customers who pay for postage online.) New table includes new prices and rate groups.]

[Delete current 216.368 in its entirety.]

[Insert current 216.4 in its entirety as new 212.4.]

* * * * *

213 Service Areas

* * * * *

213.2 Destinating Countries and Rate Groups

* * * * *

[In the table, Delete the ''Non-Document Service Rate Group'' column and revise the title of the ''Document Service Rate Group'' column to be ''GXG Rate Group''.]

* * * * *

[Revise the introductory text before the last group of countries in 213.2 as follows:]

Only documents (211.3) may be sent to the following countries:

* * * * *

213.3 Pickup Service

[Revise the first sentence of 213.3 as follows:]

On-call and scheduled pickup services are available for an added charge of $14.25 for each pickup stop, regardless of the number of pieces picked up.

214 Service Guarantee

* * * * *

[Revise the title and text of 214.2 as follows:]

214.2 Transit Days for Shipments Containing Non-Documents

Total transit days for Global Express Guaranteed service for non-document items, may be affected by general customs delays, specific customs commodity delays, holidays observed in the destinating country, and other factors beyond the Postal Service's control. See the Terms and Conditions on the Global Express Guaranteed Air Waybill/Shipping Invoice or in Publication 141 for details.

215 Inquiries, Postage Refunds, and Indemnity Claims

* * * * *

215.3 Indemnity Claims

[Delete the titles for 215.31 and 215.32 and revise the text for 215.3 as follows:]

If a shipment is lost or damaged, the sender may file a claim for document reconstruction costs (for document items), or for the declared value of the shipment costs (for non-document items). All claims must be initiated within 30 days of the shipment date by contacting a customer service representative at 800–222–1811. The representative will provide more details on how to file a claim. The original receipt of the Global Express Guaranteed Air Waybill/Shipping Invoice must be included when filing a claim. Consult Publication 141 for limitations and restrictions on indemnity payments for Global Express Guaranteed items. The Global Express Guaranteed customer service office will adjudicate refunds for Global Express Guaranteed. The Global Express Guaranteed customer service office can be contacted at 800–222–1811. Final approval and payment will be made by the Postal Service.

215.4 Extent of Postal Service Liability for Lost or Damaged Contents

[Delete the titles for 215.41 and 215.42 and revise the text for 215.4 as follows:]

For almost all network destinations, liability for a lost or damaged Global Express Guaranteed shipment is limited to the lowest of the following:

a. $100 or the amount of additional optional insurance purchased.

b. The actual amount of the loss or damage.

c. The actual value of the contents.

''Actual value'' means the lowest cost of replacing, reconstructing or reconstituting the allowable contents of the shipment (determined at the time and place of acceptance).

215.5 Insurance

[Revise the title and text of 215.51 as follows:]

215.51 Insurance for Global Express Guaranteed

For almost all network destinations, document reconstruction insurance (the reasonable costs incurred in reconstructing duplicates of nonnegotiable documents mailed), and non-document insurance for loss or damage up to $100 per shipment, is included at no additional charge. For almost all network destinations, additional insurance may be purchased for document shipments, as outlined in section 215.52, not to exceed the total cost of reconstruction, $2,499, or a lesser amount as limited by country, content, or value. Coverage, terms, and limitations are subject to change.

[Delete 215.52, and renumber current 215.53 as 215.52.]

[Delete current 216. Renumber current 217 and 218 as 216 and 217.]

216.3 Sizes and Weights

* * * * *

216.3 Dimensional Weight

[Revise 216.3 as follows:]

Postage for Global Express Guaranteed is charged based on the actual weight or the dimensional weight (as calculated in 216.3.1 or 216.3.2), whichever is greater. The equation for determining dimensional weight is as follows:

216.31 Determining Dimensional Weight for a Rectangular Shaped Parcel

Follow these steps to determine the dimensional weight for a rectangular shaped parcel:

a. Determine the length, width, and height in inches. Round off each measurement down to the nearest whole inch.

b. Multiply the length by the width by the height.

c. Divide the result by 166 and round up to the next whole number to determine the dimensional weight in pounds.

216.3.2 Determining Dimensional Weight for a Nonrectangular Shaped Parcel

Follow these steps to determine the dimensional weight for a nonrectangular-shaped parcel:

a. Determine the length, width, and height in inches. Measure the length, width, and height at their extreme dimensions. Round off each measurement down to the nearest whole inch.

b. Multiply the length by the width by the height.

c. Multiply the result by an adjustment factor of 0.785.

d. Divide the result by 166 and round up to the next whole number to determine the dimensional weight in pounds.

* * * * *

[Revise the title and text of 220 as follows:]

220 Express Mail International

[Throughout 220, change ''Global Express Mail,'' ''Global Express Mail (EMS),'' and ''EMS'' to ''Express Mail International.'']

221 Description

* * * * *

[Revise the title of 221.2 as follows:]

221.2 Eligibility

* * * * *

222 Postage

222.1 Rates

* * * * *

222.13 Online Rates—General

[Revise 222.13 as follows:]

Discounted rates apply to Express Mail International customers who prepare and pay for Express Mail International shipments online at usps.com or by using an approved USPS PC Postage vendor.

* * * * *

222.132 Online Discounts

[Revise 222.132 as follows:]

Express Mail International published rates will be reduced by 8 percent for all payments at USPS.com or made through an approved USPS PC Postage vendor. The discount applies only to the postage portion of Express Mail International rates. It does not apply to the pickup service charge, additional insurance fees, or shipments made under an International Customized Mail agreement.

* * * * *

[Revise the title of 223 as follows:]

223 Physical Characteristics

* * * * *

[Revise the title of 223.2 as follows:]

223.2 Dimensions

* * * * *

[Revise the title of 224 as follows:]

224 Mail Preparations

* * * * *

[Revise the title of 230 as follows:]

230 Priority Mail International

[Throughout 230 change the term ''Global Priority Mail,'' ''Global Priority Mail (GPM)'' and ''GPM'' to ''Priority Mail International.'']

231 Description

231.1 General

[Revise 231.1 as follows:]

With the exception of the flat rate envelope, Priority Mail International is a parcel service.

[Revise the title and text of 231.2 as follows:]

231.2 Eligibility

Personal correspondence may only be mailed in a Priority Mail International flat-rate envelope. Merchandise is permitted. Refer to the ''Country Conditions of Mailing'' in the Individual Country Listings for individual country prohibitions.

[Delete 231.3 and 231.4, (including Exhibits 231.4a and b).]

[Revise the title of 232 as follows:]

232 Postage Rates and Fees

[Delete the title of 232.1. Renumber current 232.11 as 232.1, and revise the title and text as follows:]

232.1 Flat-Rate Container

There are two flat-rate prices, one for Canada and Mexico and one for all other countries. The price does not depend on the weight of the item. Postage is required for each piece. (See Individual Country Listings for maximum weights.) Customers must use USPS provided and marked containers.

[Delete the exhibit previously numbered 232.11.]

[Renumber current 232.12 as 232.2, and revise the title and text as follows:]

232.2 Parcels

For parcels not using a flat-rate box, prices vary by weight and country rate group. (See Individual Country Listings for maximum weight.)

[Renumber 232.2 as 232.3.]

232.3 Payment of Postage

[Delete the title of new 232.31 (current 232.21) and move text as new 232.3.]

[Renumber new 232.32 (current 232.22) and 232.33 (current 232.23) as new 232.4 and 232.5.]

[Add new 232.6 as follows:]

232.6 Online Rates—General

Discounted rates apply to Priority Mail International customers who prepare and pay for Priority Mail International shipments online at usps.com or by using an approved USPS PC Postage vendor.

[Add new 232.7 as follows:]

232.7 Online Discounts

Priority Mail International published rates will be reduced by 5 percent for all

payments at usps.com or made through an approved USPS PC Postage vendor. The discount applies only to the postage portion of Priority Mail International rates. It does not apply to the pickup service charge, additional insurance fees, or shipments made under an International Customized Mail agreement.

[Revise the title of 233 as follows:]

233 Elements on the Face of a Mailpiece

233.1 Addressing

[Revise 233.1 as follows:]

All items must bear the complete delivery address of the addressee and the full name (no abbreviations) of the destination country. The name and address of the sender and addressee should also be recorded on a separate slip enclosed in the parcel. See 122.

[Revise the title and text of 233.2 as follows:]

233.2 Marking

Priority Mail International packages must be marked ''AIRMAIL'' or ''PAR AVION'' or bear one of the two prescribed airmail labels (*i.e.*, either PS Label 19–A or PS Label 19–B). The marking or label should be placed below and to the left of the delivery address.

[Revise the title of 233.3 as follows:]

233.3 Customs Form

[Replace introductory text and Exhibit 233.3 with text from current 284.45.]

[Revise the title of 234 as follows:]

234 Physical Characteristics

[Renumber current 234.1 as new 234.2. Renumber current 234.2 as new 234.1.]

[Revise the title of new 234.1 as follows:]

234.1 Weight Limits

[Delete current text and replace with text from 283]

[Revise the title of new 234.2 (current 234.1) as follows:]

234.2 Dimensions

[Delete new 234.22 through 234.24 (current 234.12 through 234.14). Renumber current 283.21 through 283.23 as new 234.22 through 234.24.]

* * * * *

234.24 Exceptional Size Limits

* * * * *

[Revise the text of new item b (current 283.23) by deleting the introductory text in item c and combining the countries listed in item c with those listed in item b.]

[Renumber current 235 as new 235.3.]

[Renumber current 236 as new 235. Revise the title of new 235 as follows:]

235 Mail Preparation

[Delete new 235.1 (current 236.1). Renumber new 235.2 (current 236.2) as new 236. Renumber new 235.3 (current 236.3) as new 232.6.]

[Renumber 284.4 in its entirety as new 235.1.]

235.1 Packaging

* * * * *

[Renumber current 284.3 in its entirety as new 235.2.]

[Add new 236 as follows:]

236 Enter and Deposit

[Renumber text in current 236.2 as 236 and revise as follows:]

Priority Mail International flat-rate containers should be presented to a retail employee at a Post Office counter; handed to a letter carrier; deposited into a street collection box if the mailpiece weighs less than 16 ounces; or pick-up requested by telephone at 800–222–1811 to be picked up at the customer's premises. Priority Mail International that bears a permit imprint must be deposited at a business mail entry unit or other acceptance point that is authorized by the postmaster. Priority Mail International that bears a meter stamp or impression must be deposited at a location that is under the jurisdiction of the licensing Post Office facility, except as permitted under DMM 604.

[Add new 238 as follows:]

238 Extra Services

Insurance is available for Priority Mail International parcels only (see 320).

* * * * *

[Revise the title of 240 as follows:]

240 First-Class Mail International

[Throughout 240 change the term ''letter-post'' to First-Class Mail International.]

241 Description

[Revise the title and text of 241.1 as follows:]

241.1 General

The First-Class Mail International classification encompasses the classes of international mail that were formerly categorized as airmail letter-post and economy letter-post, post and postal cards, printed matter and small packets that were formerly categorized as LC, (letters and cards), and AO (other articles).

* * * * *

242 Postage

242.1 Rates

[Revise the introductory text of 242.1 as follows:]

The country-specific rate group designations that apply to First-Class Mail International and airmail M-bags (see 260) are as follows:

* * * * *

[Revise the note as follows:]

Note: See the Individual Country Listings for the First-Class Mail International postage rates that are applicable to specific destination countries and territorial possessions.

242.2 Payment of Postage

[Revise the text of 242.2 as follows:]

A mailer of a First-Class Mail International item may pay postage with a postage stamps, a postage meter stamps, a postage validation imprinter (PVI) label, or a permit imprint.

[Revise the title of 243 as follows:]

243 Physical Characteristics

* * * * *

[Revise the title of 243.2 as follows:]

243.2 Dimensions

* * * * *

243.24 Nonmachinable Surcharge

[*Revise the introductory text of 243.24 as follows:*]

A $0.20 per-piece surcharge is applied to a First-Class Mail International item that weighs 1 ounce or less, if it has one or more of the following characteristics:

* * * * *

[*Revise the title of 244 as follows:*]

244 Mail Preparation

* * * * *

244.2 Marking

[*Revise items a and b by replacing ''Letter-post'' with ''First-Class Mail International;'' revise item d by replacing ''Economy (surface)'' with ''First-Class Mail International''; delete item c and re-letter items d and e as items c and d.*]

* * * * *

244.5 Customs Forms Required

244.51 Dutiable Merchandise

* * * * *

[*Revise the title of 250 as follows:*]

250 Postcards and Postal Cards

251 Description

[*Delete the title of 251.1. Renumber current 251.11 and 251.12 as new 251.1 and 251.11.*]

251.1 General

[*Revise the text of new 251.1 as follows:*]

Postcards and postal cards consist of single cards sent without a wrapper or envelope. Folded (double) cards must be

mailed in envelopes at the First-Class Mail International rate of postage.

* * * * *

[*Delete 251.2 and 251.3 in their entireties.*]

[*Revise the title of 252 as follows:*]

252 Postage Rates and Fees

[*Revise 252 by deleting reference to Aerogrammes as follows:*]

Postcards and Postal Cards

Canada and Mexico $0.69

Marshall Islands and Micronesia $0.52

All other countries $0.90

* * * * *

[*Revise the title and text of 253.2 as follows (deleting the titles and texts of 253.21 and 253.22:*]

253.2 Dimensions

Each card claimed at a card rate must be:

a. Rectangular.

b. Not less than 3½ inches high, 5½ inches long, and 0.007 inch thick.

c. Not more than 4¼ inches high, 6 inches long, and 0.016 inch thick.

Note: See 243.23 for larger cards.

[*Revise the title of 254 as follows:*]

254 Elements on the Face of a Mailpiece

* * * * *

[*Revise the title of 254.2 as follows:*]

254.2 Marking

254.21 Airmail

[*Replace current text of 254.21 with text from 251.14. Delete current title of 251.14.*]

[*Delete the current 254.3 in its entirety. Renumber current 254.22 and new 254.23 as 254.3 and 254.4.*]

[*Renumber current 251.15 and 251.16 as new 254.5 and 254.6.*]

* * * * *

260 Direct Sacks of Printed Matter to One Addressee (M-Bags)

[*Revise the title of 261 as follows:*]

261 Description

[*Revise the title of 261.1 as follows:*]

261.1 General

Direct sacks of printed matter to a single foreign addressee, which are also known as M-bags, are available to all destinations that are referenced in the ''Individual Country Listings.''

[*Revise the title of 261.2 as follows:*]

261.2 Eligibility

* * * * *

261.22 Merchandise

* * * * *

[*Delete item e.*]

[*Revise the title of 262 as follows:*]

262 Postage Rates and Fees

[*Delete the title of 262.1. Renumber current 262.11 as new 262.1.*]

[*Delete 262.12. Delete the title of 262.2. Renumber current 262.13 as new 262.2.*]

[*Renumber current 262.21 and 262.22 as new 262.3 and 262.4.*]

* * * * *

[*Revise the title of 263 as follows:*]

263 Physical Characteristics

263.1 Weight Limits

[*Revise the text in 263.1 as follows:*]

There is no minimum weight requirement for the entry of airmail M-bags or International Surface (ISAL) M-bags. The maximum weight limit for M-bags is 66 pounds, which includes the tare weight of the sack.

Customers who tender M-bags that weigh less than 11 pounds are required to pay the minimum ''11-pound bag charge'' that is applicable to the country of destination where the sack and its contents are to be delivered.

[*Revise the title and text of 263.2 as follows:*]

263.2 Dimensions

There are no defined size limits for mailpieces placed in an M-bag, so long as the items being sent can be enclosed in the mailbag.

[*Revise the title of 264 as follows:*]

264 Elements on the Face of a Mailpiece

* * * * *

[*Add new 265, Mail Preparation. Renumber current 264.2 as new 265.1. Renumber current 264.21 through 264.24 as new 265.11 through 265.14. Renumber current 264.3 as new 265.2.*]

[*Add title and text for 265.3 as follows:*].]

265.3 Extra Services

Certificate of mailing is available. Return receipts, restricted delivery, registry service and insurance are not available with M-bags.

[*Revise the title of 270 as follows:*]

270 Free Matter for the Blind or Other Physically Handicapped Persons

271 Description

[*Revise 271 as follows:*]

271.1 General

Subject to the standards below and DMM 703, matter may be entered free of postage if mailed by or for the use of blind or other persons who cannot read or use conventionally printed materials due to a physical handicap.

271.2 Eligibility

Eligible participants must be residents of the United States, including the several states, territories, insular possessions, and the District of Columbia, or American citizens domiciled abroad.

271.3 Matter Sent to or by Blind or Other Physically Handicapped Persons

Acceptable matter and the conditions for mailing such matter that may be sent free under this standard are limited to the items described in 270 and DMM 703.

[*Revise the title and text in 272 as follows:*]

272 Postage Rates and Fees

The postage rate for an eligible item mailed as matter for the blind is:

a. Free when sent as First-Class Mail International.

b. The applicable rate based on the weight of the mailpiece if any level of service other than First-Class Mail International is desired.

[*Revise the title of 273 as follows:*]

273 Physical Characteristics

* * * * *

[*Revise the title of 273.2 as follows:*]

273.2 Dimensions

* * * * *

[*Revise the title of 274 as follows:*]

274 Elements on the Face of a Mailpiece

* * * * *

274.2 Marking

[*Revise 274.2 as follows (deleting the titles and text for 274.21 and 274.22:*]

First-Class Mail International accepted as free matter must be marked ''Free Matter for the Blind or Handicapped'' in the upper right-hand corner of the address side of the mailpiece.

[*Delete 274.3 and 274.4. Add 275 as follows:*]

* * * * *

275 Mail Preparation

275.1 Packaging

275.11 Postal Inspection

Matter for the blind or physically handicapped is subject to postal inspection (see ASM 274), and must be prepared in such a way that the contents are protected but inspection of the contents is not hindered.

[*Insert title and text from old 274.42 as new 275.12.*]

[*Add new 276 as follows:*]

276 Extra Services

Registered Mail and Insurance are the only extra services that can be added to mail sent as free matter for the blind or handicapped.

* * * * *

[*Reserve 280.*]

* * * * *

290 Commercial Services

291 (Reserved)

292 International Priority Airmail Service

[*Change ''letter-post'' to ''First-Class Mail International'' throughout 292.*]

292.1 Description

* * * * *

292.12 Qualifying Mail

[*Revise the first sentence as follows:*]

Any item of the First-Class Mail International classification, as defined in 141.5 and 141.6, qualifies, including postcards. * * *

* * * * *

292.14 Dutiable Items

[*Revise 292.14 by changing ''Parcel post (CP)'' to ''Priority Mail International (CP).''*]

* * * * *

293 International Surface Air Lift (ISAL) Service

[*Change ''letter-post'' to ''First-Class Mail International'' throughout 293.*]

293.1 Definition

[*Revise the second sentence to read as follows:*]

* * * The cost is lower than First-Class Mail International. * * *

* * * * *

293.9 Preparation Requirements

* * * * *

[*Delete 293.92. Renumber 293.93, 293.94, and 293.95 as 293.92, 293.93, and 293.94*]

* * * * *

[*Revise the title of 294 as follows and delete all text previously in 294:*]

294 (Reserved)

* * * * *

[*Revise the title of 295 as follows and delete all text previously in 295:*]

295 (Reserved)

* * * * *

297 International Customized Mail

[*Change ''letter-post'' to ''First-Class Mail International'' and change ''Global Priority Mail'' to ''Priority Mail International'' throughout 297.*]

* * * * *

[*Revise the heading of 3 as follows:*]

3 Extra Services

310 Certificate of Mailing

* * * * *

312 Availability

[*Revise 312 by deleting the words ''letter-post,'' ''parcel post'' and ''recorded delivery'' as follows:*]

Customers can purchase a certificate of mailing when they send unregistered First-Class Mail International, post/postal cards, free matter for the blind and uninsured Priority Mail International parcels. To obtain an additional certificate after mailing, the mailer must present the original certificate and an additional certificate endorsed ''Duplicate'' or a copy showing the original dates of mailing. The additional certificate must be postmarked to show the current date. A certificate of mailing cannot be obtained in combination with registered mail, insured parcels, or bulk mailings of 200 pieces or more that bear a permit imprint.

313 Fees

313.1 Individual Pieces

[*Revise 313.1 by changing ''letter-post'' to ''First-Class Mail International'' and ''parcel post'' to ''Priority Mail International,'' and reference that fees are linked to Domestic Case as follows:*]

The fee for certificates of mailing for ordinary First-Class Mail International items and ordinary Priority Mail International parcels is $4.75 (fee is linked to domestic case currently under review by the Postal Rate Commission (PRC) per piece whether the item is listed individually on a PS Form 3817, *Certificate of Mailing*, or on firm mailing bills. Additional copies of PS Form 3817, or firm mailing bills, are available for $0.95 (fee is linked to domestic case currently under review by the PRC) per page. The fee is $0.95 (fee is linked to domestic case currently under review by the PRC) per article.

313.2 Bulk Pieces

[*Revise 312.2 by changing ''letter-post'' to ''First-Class Mail International,'' and reference that fees are linked to Domestic Case as follows:*]

PS Form 3606, *Certificate of Bulk Mailing*, is used to specify the total number of identical pieces of ordinary First-Class Mail International that are paid for with regular postage stamps, precanceled stamps, or meter stamps. The following certificate of mailing fees apply:

Up to 1,000 pieces	Fee is linked to domestic case currently under review by the PRC.
Each additional 1,000 pieces or fraction	Fee is linked to domestic case currently under review by the PRC.
Duplicate copy	Fee is linked to domestic case currently under review by the PRC.

* * * * *

320 Insurance

321 Description

[*Revise 321 as follows:*]

Insurance is provided against loss, damage, or rifling for Priority Mail International parcels. Compensation varies according to the amount of insurance coverage. For parcels delivered to the addressee in damaged condition or with missing contents, payment is made to the addressee unless the addressee waives payment, in writing, in favor of the sender. Insurance is not available for the Priority Mail International envelope.

322 Availability

[*Revise 322 as follows:*]

Insurance is available only for Priority Mail International parcels and only to certain countries. See Individual Country Listings. Insurance is not available for First-Class Mail International items or for the Priority Mail International envelope.

* * * * *

324 Processing Requests

324.1 Mailing Receipt and Insurance Number

324.11 General Use

[*Revise 324.11 as follows:*]

All insured international parcels must be numbered. PS Form 3813–P, *Insured Mail Receipt*, provides a numbered insurance label for the parcel and an identically numbered mailing receipt for the sender. The receipt is issued to the sender as proof of mailing and proof of payment of an insurance fee. Volume mailers may use PS Form 3877, Firm Mailing Book for Accountable Mail, as

the sender's receipt. Only labels printed by the Postal Service may be used on international insured mail.

* * * * *

324.13 Sender's Responsibility

[*Revise 324.13 as follows:*]

Sender should enter the name and address of the addressee on the mailing receipt and retain it. The receipt must be submitted if the sender wishes to file a claim. (See Chapter 9).

* * * * *

324.5 Return Receipt

[*Revise 324.5 as follows:*]

Return receipts may be purchased for insured parcels mailed to some countries. See individual country listings for availability.

* * * * *

325 Indemnity Claims and Payments

[*Revise 325 as follows:*]

The sender must submit the original mailing receipt to file a claim (see Chapter 9).

* * * * *

330 Registered Mail

331 Description

[*Revise 331 by deleting the words ''and do not extend uniformly to damage or rifling of contents.''*]

332 Availability

[*Revise the text to read as follows:*]

Customers can purchase registered mail service only when they send First-Class Mail International items, post/postal cards, and free matter for the blind items. Registered items may weigh up to 4 pounds. Registered Mail Service is not available in combination with Priority Mail International parcels, or M-bags to one addressee. See Individual Country Listings for country-specific prohibitions and restrictions.

333 Fees and Indemnity Limits

333.1 Registration Fees

[*Revise 333.1 to indicate that the registered fee is linked to the domestic case as follows:*]

The registry fee for all countries is $11.95 (fee is linked to domestic case currently under review by the PRC).

333.2 Indemnity Limit

[Revise 333.2 to reflect the 2007 indemnity limit as follows:]

Regardless of the declared value of a registered item, the maximum amount of indemnity payable for loss, damage, or rifling is $43.73.

334 Processing Requests

334.1 Mailing Receipt and Registration Number

* * * * *

334.12 Sender's Responsibility

[Revise item c as follows:]

* * * * *

c. The sender should retain the receipt and must submit it if he or she wishes to file a claim for the registered item (see Chapter 9).

334.13 Accepting Clerk's Responsibility

Accepting clerk must:

[Revise item a as follows:]

a. Affix Label 200, Registered Mail, to the item in the upper left side of the address side, below the return address, and enter the number in ink on the mailing receipt.

* * * * *

334.14 Preparation

[Revise 334.14 as follows:]

Items bearing an address in pencil or any other erasable format must not be accepted for registered mail service.

* * * * *

334.4 Sealing

334.41 Sender's Responsibility

[Revise the first sentence of 334.41 as follows:]

Senders must securely seal all items presented for registration.

* * * * *

[Revise title of 334.42 as follows:]

334.42 Registered Free Matter for the Blind or Other Physically Handicapped Persons

* * * * *

336 Preparation

[Delete 336 in its entirety.]

340 Return Receipt

341 Description

[Revise 341 as follows:]

PS Form 2865, *Return Receipt for International Mail (Avis de Reception),* is a pink card that is attached to a registered item, an insured parcel, or an Express Mail International item to certain countries (see 221.4), at the time of mailing, and which is removed and signed at the point of delivery and returned to the sender. Return Receipt service provides the sender with evidence of delivery. Return receipts are completed in the country of destination in accordance with its internal regulations, which may not require the addressee's signature except under special circumstances. These receipts are returned to the sender by airmail.

342 Availability

[Revise 342 by deleting the words ''recorded delivery'' to read as follows:]

Return receipts can be purchased only at the time of mailing and are available *only* for registered items and insured parcels. Exception: return receipts are also available to a limited number of countries for Express Mail International (see 221.4). Some countries do not allow return receipts or restrict them to registered mail. See Individual Country Listings.

343 Fee

[Revise 343 to reflect that fee is linked to domestic case as follows:]

The fee for a return receipt is $2.15 (fee is linked to domestic case currently under review by the PRC.) This fee must be paid in addition to postage and other applicable charges. Return receipt service is available at no charge for Express Mail International to certain countries.

Note: Include the weight of the return receipt when determining the postage for mailing the item.

344 Processing Requests

344.1 Form

344.11 Sender's Responsibility

[Revise 344.11 as follows:]

Sender must enter the return address on the return receipt.

344.12 Accepting Clerk's Responsibility

[Revise 344.12 as follows:]

Accepting clerk must:

a. Record the return receipt fee on the insured or registered mailing receipt.

b. Enter the address of the addressee on the return receipt.

c. Attach the return receipt to the item.

d. Affix and cancel postage equal to the sum of the return receipt fee, postage, and other applicable fees.

* * * * *

[Delete 344.3 in its entirety.]

* * * * *

344.4 Return Receipt Improperly Completed or Not Received

[Revise 344.4 read as follows:]

If the sender does not receive a return receipt for which a fee was paid, or if the sender receives an improperly completed return receipt, an inquiry may be filed. (See 920 for inquiry procedures.)

350 Restricted Delivery

* * * * *

352 Availability

* * * * *

[Revise item b by deleting ''recorded delivery'' as follows:]

b. For registered items.

* * * * *

[Delete 360, Recorded Delivery, in its entirety.]

* * * * *

370 Supplemental Services

* * * * *

371 International Money Orders

371.1 Description

371.11 General

[Revise 371.11 by changing ''Global Express Mail service (EMS)'' to ''Express Mail International.'']

* * * * *

372 International Reply Coupons

* * * * *

372.3 Selling Price and Rate of Exchange

* * * * *

[Revise item b by deleting ''(including aerogrammes).'']

* * * * *

4 Treatment of Outbound Mail

* * * * *

420 Shortpaid and Unpaid Mail

[Change ''letter-post'' to ''First-Class Mail International'' and ''Global Express Mail'' to ''Express Mail International'' throughout 420.]

* * * * *

5 Nonpostal Export Regulations

[Change ''letter-post'' to ''First-Class Mail International'' and ''parcel post'' to ''Priority Mail International'' throughout 5.]

* * * * *

6 Special Programs

610 Postal Qualified Wholesaler Program

* * * * *

613 Qualifying as a Wholesaler

613.1 Letter of Request

* * * * *

[Revise the address in 613.1 as follows:]

MANAGER INTERNATIONAL PRODUCTS, U.S. POSTAL SERVICE 475 L'ENFANT PLZ., SW., RM. 5726, WASHINGTON, DC 20260–5726.

* * * * *

7 Treatment of Inbound Mail

* * * * *

730 Shortpaid Mail to the United States

731 Computation of Postage Due

[Revise the handling charge in the example to correspond with the text in 731b. Center T and x within equation as in current IMM as follows:]

b. The receiving exchange office in the United States multiplies the T fraction by the U.S. international letter rate to determine the short paid amount in U.S. currency. This amount, plus a $0.50 handling charge, accounts for the postage-due amount to be collected on delivery. The postage-due formula is:

T *shortpaid amount* **X** U.S. int'l letter rate

surface letter rate of postage to U.S.

* * * + $0.50 handling charge * * *

= Postage due amount

* * * * *

[Revise the title of 750 as follows:]

750 Extra Services

754 Restricted Delivery

754.1 Inbound Registered Mail

[Revise 754.1 as follows:]

Inbound registered mail, accompanied by a return receipt and bearing the notation A Remettre en Main Propre or Restricted Delivery, should be delivered only to the addressee or their authorized agent.

* * * * *

[Delete 755, Recorded Delivery, in its entirety.]

760 Forwarding

* * * * *

762.2 Undeliverable Domestic Mail Bearing U.S. Postage and a Foreign Return Address

* * * * *

[Revise the text of item 762.2 c as follows:]

* * * * *

c. First-Class Mail containing merchandise, Standard Mail items, or Package Services parcels, which bear a foreign return address, must be held at the Post Office of the addressee, while a request for instructions is sent to International Claims, St. Louis ASC, P.O. Box 80146, St. Louis, MO 63180–0146: Requests must include the following information:

(1) Names and addresses of sender and addressee.

(2) Weight of the item and any special services.

(3) Nature and value of contents if known. The International Claims Office will contact the sender for disposition instructions, completion of the required customs forms, and payment of additional postage.

* * * * *

764 Mail of Foreign Origin

* * * * *

764.2 Forwarding to another Country

* * * * *

764.23 Parcels

* * * * *

[Add new 764.232 as follows:]

[Renumber current 764.232 as new 764.233.]

764.232 Delivery to an Alternate Addressee

If the addressee has moved to a third country or if the sender has included instructions for delivery to an alternate addressee in a third country, the Post Office facility must hold the parcel and request instructions from International Claims, St. Louis ASC, P.O. Box 80146, St. Louis, MO 63180–0146. Requests should include the following information:

a. Names and addresses of sender and addressee, or alternate addressee.

b. Weight of the parcel.

c. Whether the parcel is insured.

d. Nature and value of the contents as shown on the customs declaration.

* * * * *

770 Undeliverable Mail

771 Mail of Domestic Origin

* * * * *

[Revise the title of 771.5 as follows:]

771.5 Return Charges for First-Class Mail International

771.51 General Procedure

* * * * *

[Revise 771.51 by changing ''letter-post'' to ''First-Class Mail International.'']

[Revise item a as follows.]

a. First-Class Mail International.

* * * * *

[Revise item d as follows:]

d. First-Class Mail International M-bag.

* * * * *

[Delete items e, f, and g.]

771.52 Exceptions

[Revise items a and b by changing ''letter post'' to ''First-Class Mail International.'']

[Revise the title of 771.6 as follows:]

771.6 Return Charges for Priority Mail International

* * * * *

771.7 Handling of Returned Parcels

771.71 Refused by Sender

[Revise 771.71 by changing ''parcel post'' to ''Priority Mail International.'']

* * * * *

[Add new 771.73 as follows:]

771.73 Sender Has Moved to another Country

If the sender has moved to another country, the Post Office facility must hold the parcel and request instructions from International Claims, St. Louis ASC, P.O. Box 80146, St. Louis, MO 63180–0146. Requests should include the following information:

a. New address of the sender.

b. Amount of return charges due on the parcel.

c. Weight of the parcel.

d. Whether the parcel is insured.

e. Nature and value of the contents as shown on the customs declaration.

* * * * *

780 Items Mailed Abroad by or on Behalf of Senders in the United States

* * * * *

783 Advance Payment Required

783.1 Sample Mailpiece

[Revise 783.1 to change room number in address to RM 5726.]

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9 Inquiries, Indemnities, and Refunds

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920 Inquiries and Claims

921 Inquiries

* * * * *

921.2 Initiating an Inquiry

[Revise the first two sentences in 921.2 as follows:]

Inquiries can be initiated for Global Express Guaranteed (GXG) items, Express Mail International items, registered items, and insured and ordinary parcels. Inquiries are not accepted for ordinary letters, or M-bags.* * *

EXHIBIT 921.2—TIME LIMITS FOR INQUIRIES

[Revise the product or Extra Services column and the note in Exhibit 921.2 as follows:]

Product	Who	When (from mailing date)	
		No sooner than . . .	No later than . . .
Global Express Guaranteed	U.S. Sender Only	3 days	30 days.
Express Mail International	U.S. Sender Only	3 days	90 days.
Express Mail International with Guarantee	U.S. Sender Only	3 days	30 days.
Registered items, insured or ordinary parcels	Sender or Addressee	7 days	6 months.
	Sender or Addressee	30 days	6 months.

* Inquires are not accepted on ordinary letters or M-bags.

921.3 How to Initiate

[Revise the text and change item d as follows:]

Customers must call the International Inquiry Center at 800–222–1811 within the time limits listed in Exhibit 921.2 to initiate an inquiry. Customers will be asked to provide the following minimal information:

a. Mailing receipt number or barcode number of the article.

b. Names and addresses of the mailer and the addressee.

c. Date of mailing.

d. Description of contents.

921.4 Inquiry Process

[Revise the text of 921.4 as follows:]

After the Postal Service customer provides the International Inquiry Center with the relevant mailing information, the International Inquiry Center will correspond with the appropriate foreign post and advise the customer of the results of the inquiry. Customers must allow foreign posts approximately 60 days to research and respond to the International Inquiry Center for inquiries on registered items, and insured and ordinary parcels. When there is a determination that an item has been lost, the International Inquiry Center will mail a claim packet to the customer. The packet will include a letter of instruction on how to complete and submit the claim.

921.5 General Procedures

921.51 Nondelivery

[Revise the text of 921.51 as follows:

The U.S. Postal Service will initiate an inquiry within the time frames specified in 921.2 with the destination postal administration in any case involving a GXG, Express Mail International, registered item, or insured or ordinary parcel that has not been delivered. Inquiries are not accepted for ordinary letters or M-bags.

921.52 Return Receipts Improperly Completed or Not Received

[Revise the text of 921.52 to read as follows:]

If the sender receives an improperly completed return receipt or a return receipt is not received, the sender may file an inquiry about the delivery of the article by calling 800–222–1811.

921.53 Rifled Parcels

[Revise title and text of 921.53 as follows:]

921.53 Damaged or Rifled Parcels, Registered Mail, and Express Mail International

Customer must go to a Post Office to report instances of damaged or rifled items. Postal personnel should complete PS Form 673, Report of Rifled Parcel, in accordance with POM 169.3. Form 2856, *Damage Report of Insured Parcel and Contents,* should also be completed in accordance with POM 146.112 for all international insured and ordinary parcels, registered mail, and Express Mail International.

* * * * *

922 Claims

922.1 General Description

[Revise the first sentence in 922.1 as follows:]

A claim is a request by a U.S. Postal Service customer for an indemnity payment that resulted in the loss, damage, or rifling of a GXG, Express Mail International, registered item, or insured or ordinary parcel. See 221.3, 237, 320, 330, and country listings for information on indemnity limits.* * *

922.2 Filing a Claim

[Revise 922.2 as follows:]

Claims may be filed for GXG, Express Mail International, registered items, and

insured and ordinary parcels as noted in Exhibit 922.2. Claims may not be filed for ordinary letters or M-bags. Claims for registered items, and insured and ordinary parcels may not be filed until after an inquiry has been completed in accordance with the procedures in 921. Claims for rifled or damaged articles should be filed immediately. Claims for registered items, insured, and ordinary parcels delivered to the addressee in damaged condition or with missing contents are payable only to the addressee, unless the addressee waives their right to payment, in writing, in favor of the sender. All claims for inbound international registered items and insured and ordinary parcels received in damaged condition or with missing contents, must be supported by Form 2856. If the addressee does not accept delivery and the item is returned to the sender, the sender will be the payee.

FILING CLAIMS

[Revise the Product and Who column and the note in Exhibit 922.2 as follows:]

Product	Who	How	
		Lost Article	Damaged/Rifled
GXG and Express Mail International	U.S. Sender Only	800–222–1811	1–800–222–1811
GXG and Express Mail International (article returned to sender).	U.S. Sender Only	N/A	Any Post Office* (PS Form 2855)
Registered item, insured parcel, ordinary parcel	U.S. Sender or Addressee	800–222–1811	Any Post Office* (PS Form 2855)

*Must present the article, mailing container, wrapping, packaging, and any other contents received in damaged condition or with missing contents to a post office immediately.

* * * * *

922.3 Claims Process

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922.31 Proof of Mailing

* * * * *

[Revise text of 922.31 and items a (2), (3), and (4) to read as follows:]

Indemnity claims for GXG, Express Mail International, registered mail, and insured and ordinary parcels must be supported as follows:

a. If mailed in the United States:

(1) For Global Express Guaranteed items, the original receipt of the GXG Air Waybill/Shipping Invoice.

(2) For Express Mail International items, PS Form 2861, *Express Mail International Service Inquiry,* received from the International Inquiry Center.

(3) For registered items and insured parcels, the original mailing receipt issued at the time of mailing. Copies are not acceptable.

(4) For ordinary parcels, the customer copy of PS Form 2976–A, *Customs Declaration and Dispatch Note—CP 72.*

[Add a new note after item b as follows:]

b. If mailed from a foreign country: The original mailing receipt if available, the customs label, the wrapper, and any other markings or endorsements on the mailing container that indicate how it was sent.

Note: Mailing particulars must also be verified with the country of origin before a claim can be settled.

* * * * *

922.4 Processing Claims for Rifled or Damages Articles

* * * * *

922.42 Postal Service

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[Revise the text of 922.42b and delete the last sentence ''There is no fee for processing a claim.'' to read as follows:]

Postal Service personnel must:

a. Complete sections III and IV of PS Form 2855.

b. Prepare a damage report on Form 2856, *Damage Report of Insured Parcel and Contents,* detailing the condition of the item at the time of delivery, and indicate whether or not the item was properly packaged to withstand normal handling in international mail.

c. Attach the damage report and the documentation described in 922.3 to the claim.

d. Send PS Form 2855 and related documents, including the customs label and the wrapper, if appropriate, to: International Claims, St. Louis ASC, PO Box 80146, St. Louis, MO 63180–0146.

* * * * *

923 Disposition of Damaged Mail

[Revise the introductory sentence of 923 and item b to read as follows:]

Dispose of damaged registered mail, insured parcels, and ordinary parcels for which claims have been filed as follows:

* * * * *

b. International insured parcels, ordinary parcels, and Canadian registered mail:

* * * * *

930 Indemnity Payments

931 Adjudication and Approval

* * * * *

931.2 International Claims

[Revise title and text of 931.21 by changing ''Parcel Post'' to ''Parcels'', and text as follows:]

931.21 Indemnity Claims for International Registered Mail, Insured Parcels, and Ordinary Parcels of U.S. and Foreign Origin

Indemnity Claims relating to international registered mail, insured and ordinary parcels of both U.S. and foreign origin are adjudicated by the St. Louis Accounting Service Center.

931.22 Country of Origin Pays Indemnity

[Revise 931.22 as follows:]

Payment is made as follows:

a. Express Mail claims are paid by the country of origin to the sender. Payments to U.S. senders will by made by the U.S. Postal Service.

b. Indemnity for the loss of registered mail, insured parcels and ordinary parcels is paid by the country of origin to the sender. Payments to U.S. senders will be made by the U.S. Postal Service. The sender may waive their right to payment, in writing, in favor of the addressee. Payment in such cases will be made by the destination administration.

c. Claims for items delivered in damaged condition or with missing contents may be made to the addressee by the destination administration. If the addressee waives their right to payment, in writing, in favor of the U.S. sender, payment will be made to the sender by the U.S. Postal Service.

d. Claims for items mailed in foreign administrations that are delivered in damaged condition or with missing contents may be paid to the addressee.

Payments will be made to the U.S. addressee by the U.S. Postal Service. The addressee may waive their right to payment in favor of the sender. Payment in such cases will be made by the origin administration.

* * * * *

[Revise title of 932 as follows:]

932 General Exceptions to Payment—Registered Mail, and Insured Parcels, and Ordinary Parcels

* * * * *

[Revise title of 933 by changing ''Parcel Post'' to ''Parcels.'']

933 Payments for Insured Parcels and Ordinary Parcels

933.1 General Provisions

[Revise title and text of 933.11 as follows:]

933.11 Insured Parcels

Indemnity may be paid for loss, rifling, or damage, based on the actual value of articles at the time and place of mailing.

933.12 Indemnity Will Not Be Paid

[Revise third sentence of item d(3) to read as follows:]

In addition to the general exceptions to payment described in 932, indemnity will not be paid:

d. For parcels that:

(3) Were not posted in the manner prescribed. In the event of loss, rifling, or damage of mail erroneously accepted for insurance to other countries, limited indemnity may be paid as if it had been addressed to a domestic destination, *i.e.* on the basis of the indemnity limits for domestic insured mail. If postage was erroneously collected at other than a parcel rate, but the parcel was otherwise properly accepted for insurance, indemnity may be paid pursuant to the general provisions of this section and the special provisions of 933.2.

* * * * *

[Revise titles of 933.13 and 933.14 by changing ''Parcel Post'' to ''Parcels.'']

933.13 Ordinary Parcel Post—Indemnity Limitations

* * * * *

933.14 Ordinary Parcel Post—Exceptions to Indemnity

* * * * *

934 Payments for Registered Mail

[Revise title and text of 934.12 as follows:]

934.1 General Provisions

* * * * *

934.12 Parcel Post Erroneously Accepted

934.12 Parcels Erroneously Accepted as Registered Mail

If a parcel is accepted in error as registered mail, indemnity may be paid under the conditions in 934.2.

934.13 Indemnity Will Not Be Paid

* * * * *

[Revise item b to read as follows:]

b. To anyone in the United States, other than the addressee, for items delivered in damaged condition or with missing contents. The addressee may waive payment, in writing, in favor of the sender.

* * * * *

934.2 Special Provisions

[Revise amount payable in 934.2 to ''$43.73.'']

* * * * *

[Revise 935 by changing ''Global Express Mail'' and ''Global Express Mail (EMS)'' to ''Express Mail International'' throughout.]

* * * * *

940 Postage Refunds

[Revise 941 by changing ''letter-post'' and ''parcel post'' to ''First-Class Mail International'' and Priority Mail International'' throughout.]

* * * * *

[Revise 942 by changing ''Global Express Mail'' and ''EMS'' to ''Express Mail International'' throughout.]

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942 Postage Refunds for Express Mail International Items

* * * * *

942.5 Unallowable Refund—Express Mail International With No Service Guarantee

* * * * *

942.53 Consequential Damages

[Add new last sentence to 942.53 as follows:]

See DMM 609 and 503, and IMM 221.3 and 935.2 for limitations of indemnity coverage.

943 Processing Refund Applications

943.1 Items Originating in the United States

[Revise first sentence 943.1 as follows:]

Requests for refunds for ordinary letters, registered mail, insured parcels, and ordinary parcels originating in the United States, and Express Mail International with Guarantee are handled as follows:* * *

[Revise item b by deleting ''Recorded Delivery'' and changing ''parcel post'' to ''parcel.'']

[Revise item c by changing ''EMS'' to ''Express Mail International.'']

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes if our proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E6–21750 Filed 12–19–06; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 261

[EPA–R07–RCRA–2006–0923; FRL–8258–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is proposing to grant a petition to exclude or ''delist'' wastewater treatment sludge from conversion coating on aluminum generated by the Ford Motor Company (Ford) Kansas City Assembly Plant (KCAP) in Claycomo, Missouri from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). This proposed exclusion, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under RCRA.

This petition was evaluated in a manner similar to the expedited process developed as a special project in conjunction with the Michigan Department of Environmental Quality (MDEQ) for delisting similar wastes generated by a similar manufacturing process. See 76 FR 10341, March 7, 2002. Based on an evaluation of waste-specific information provided by Ford, we have tentatively concluded that the petitioned waste from KCAP is nonhazardous with respect to the original listing criteria and that there are no other factors which would cause the waste to be hazardous. This exclusion, if finalized, would be valid only when the sludge is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

DATES: We will accept public comments on this proposed rule until February 5, 2007. We will stamp comments postmarked after the close of the comment period as ''late.'' These ''late'' comments may not be considered in formulating a final decision. Any person may request a hearing on this proposed decision by filing a request with Carol Kather, Acting Director, Air, RCRA and Toxics Division, Environmental Protection Agency Region 7, 901 N. 5th St., Kansas City, Kansas, 66208. Your request for a hearing must reach EPA by January 4, 2007. The request must contain the information prescribed in Title 40 Code of Federal Regulations (40 CFR) 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–RCRA–2006–0923, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: herstowski.ken@epa.gov*
3. *Mail:* Ken Herstowski, Environmental Protection Agency, RCRA Corrective Action and Permit Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier.* Deliver your comments to: Ken Herstowski, Environmental Protection Agency, RCRA Corrective Action and Permit Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–RCRA–2006–0923. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, RCRA Corrective Action and Permits Branch, 901 North 5th Street, Kansas City, Kansas. The hard copy RCRA regulatory docket for this proposed rule, EPA–R07–RCRA–2006–0923, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at $0.15 per page. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket, contact Kenneth Herstowski at the Environmental Protection Agency, RCRA Corrective Action and Permit Branch, 901 North 5th Street, Kansas City, Kansas 66101, by calling 913–551–7631 or by e-mail at *herstowski.ken@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
A. What is a delisting petition?
B. What regulations allow a waste to be delisted?
II. Ford's Petition To Delist Waste From the Kansas City Assembly Plant
A. How is the petitioned waste generated?
B. What is the process for delisting F019 from zinc phosphating operations at automobile and light truck assembly plants?
C. What information did Ford submit in support of its petition?
III. EPA's Evaluation of This Petition
A. How did EPA evaluate the information submitted?
B. What did EPA conclude about this waste?
IV. Proposal To Delist Waste From Kansas City Assembly Plant
A. What is EPA proposing?
B. What are the terms of this exclusion?
C. What are the maximum allowable concentrations of hazardous constituents in the waste?
V. Statutory and Executive Order Reviews

I. Background

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

A. What is a delisting petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See 40 CFR 260.22, 42 United States Code (U.S.C.) 6921(f) and the background document for a listed waste.)

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste and to ensure that future generated waste meets the conditions set.

B. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), a facility may petition the EPA to remove its waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR.

II. Ford's Petition To Delist Waste From the Kansas City Assembly Plant

A. How is the petitioned wasted generated?

Ford is petitioning to exclude wastewater treatment sludge resulting from a conversion coating process on truck bodies which have aluminum components. The truck bodies are

immersed in a zinc phosphate bath which applies a conversion coating on the surface of the metal. The rinses and overflows from the conversion coating process comingle with wastewaters from cleaning and rinsing operations which may include alkaline cleaners, surfactants, organic detergents and rinse conditioners. After the zinc phosphating bath, the truck bodies are subjected to an electrocoating process and spray painting. Overflows and rinse water from the electrocoating process and from the paint booths combine with the wastewater from the conversion coating before entering the wastewater treatment plant. When treated, the wastewater from the conversion coating on aluminum causes all the sludge generated from these wastewaters to be a listed waste, F019.

In the wastewater treatment plant, large particles are screened out and the wastewater is sent to various thickeners and clarifier tanks where water and solids are further separated. The pH of the wastewater may be adjusted and flocculents and coagulants may be added to facilitate the thickening process. The solids which settle in the thickeners and clarifiers are dewatered in a filter press and the resultant F019 filter cake drops into a roll off box for disposal.

The zinc phosphating process used today does not contain hexavalent chromium or cyanide for which F019 was originally listed, but trivalent chromium, nickel, and zinc may be present in the wastewater and in the sludge. Other hazardous constituents such as organic solvents, formaldehyde or additional metals could also be in the waste stream. Before a waste can be delisted, the petitioner must demonstrate that there are no hazardous constituents in the sludge from other operations in the plant at levels of concern and that there are no other factors that might cause the waste to be hazardous. Ford believes that its sludge does not contain the constituents for which F019 was listed and that there are no other constituents or factors that would cause the waste to remain hazardous.

B. What is the process for delisting F019 from zinc phospating operations at automobile and light truck assembly plants?

The zinc phosphating process used by Ford at KCAP is substantially similar to the process used at most automobile and light truck assembly plants in conversion coating steel and aluminum. A number of automobile and light truck assembly plants have been granted hazardous waste exclusions as a result of a special expedited delisting project established in a Memorandum of Understanding (MOU) between EPA Region 5 and MDEQ (67 FR 10341, March 7, 2002, and 68 FR 44652, July 30, 2003). These facilities were able to take advantage of a common sampling approach and expedited rulemaking procedure mainly due to the similarity of the wastes and processes generating the waste. Ford certified that the process generating the filter cake at KCAP is consistent with the process described in the MOU for expedited delistings.

Using available historical data and other information, the expedited process identified 70 constituents which might be of concern in the F019 waste generated at automobile and light truck assembly plants, and a Sampling and Analysis Plan was developed specifically for testing this waste. EPA agreed to allow Ford to use the same Sampling and Analysis Plan and the same list of constituents of concern to demonstrate that the levels of constituents in the waste at KCAP are below the levels of concern that could pose a threat to human health or the environment when the waste is disposed in a nonhazardous landfill.

C. What information did Ford submit in support of its petition?

To support its exclusion demonstration, Ford collected six samples representing waste generated at KCAP over six weeks. All sampling was done in accordance with the Sampling and Analysis Plan developed for the expedited delisting project but modified to eliminate multiple sampling events or long term storage of full roll-off boxes. A representative amount of sludge was collected each week for six weeks starting with the week of November 1, 2005 and continuing through the week of December 12, 2005. The sludge for each week was placed in a separate 55 gallon drum, and on December 19, 2005, composite and grab samples were collected from all drums. In accordance with the Sampling and Analysis Plan, each sample was analyzed for: (1) Total volatile organic compound (VOC) analysis using SW–846 8260B with formaldehyde analysis using SW–846 8315A, semivolatile organic compound (SVOC) analysis using SW–846 8270C; (2) Toxicity Characteristic Leaching Procedure (TCLP), Method 1311 in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW–846) for the inorganic, VOC and SVOC constituents of concern; (3) oil and grease analysis using SW–846 1664, (4) total metals using SW–846 6010B or 6020 with mercury analysis using SW–846 7471A; (5) total constituent analysis for sulfide, SW–846 Method 9034 and reactive analysis for sulfide, SW–846 Section 7.3; and (6) total constituent analysis for cyanide, SW–846 Method 9012A and reactive analysis for cyanide, SW–846 Section 7.3. In addition, the pH of each sample was measured using SW–846 Method 9045C and a determination was made that the waste was not ignitable, corrosive or reactive (see 40 CFR 261.21–261.23). The data submitted included the appropriate quality assurance/quality control information and was validated by an independent third party as required in the Sampling and Analysis Plan. The maximum values of constituents detected in any sample of the wastewater treatment sludge or in a TCLP extract of that sludge are summarized in the table below.

Constituent	Maximum concentration observed		Maximum allowable delisting level (2,000 cubic yards)	
	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)
Barium	220	<0.05	NA	1.00×10^{2}
Bis(2-ethylhexyl)phthalate	18	0.0036	NA	3.65×10^{-1}
Chromium	40	<0.18	7.60×10^{5}	5.00×10^{0}
Cresol, p-	8.2	0.4	NA	1.14×10^{1}
Cyanide	0.86	<0.05	NA	1.15×10^{1}
Dinitrotoluene, 2,4-	<0.001	0.00028	2.29×10^{5}	1.30×10^{-1}
Ethylbenzene	1.6	0.06	NA	4.26×10^{1}
Formaldehyde	4.9	0.24	6.88×10^{3}	3.43×10^{2}
Mercury	0.2	<0.0007	1.04×10^{1}	1.55×10^{-1}

Constituent	Maximum concentration observed		Maximum allowable delisting level (2,000 cubic yards)	
	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)
Napthalene	<0.001	0.011	NA	7.28×10^{-1}
Nickel	3000	8.7	NA	9.05×10^{1}
Sulfides	230	NA	NA	NA
Thallium	21	<0.02	1.16×10^{5}	2.82×10^{-1}
Tin	120	3.1	NA	7.21×10^{2}
Toluene	<0.001	0.0025	NA	6.08×10^{1}
Xylenes (total)	7.9	0.33	NA	1.89×10^{1}
Zinc	7900	0.74	NA	8.98×10^{2}

<—Not detected at the specified concentration.
NA—The DRAS program did not calculate a delisting level for this constituent, or the delisting level was higher than those levels expected to be found in the waste. In the event high levels are discovered later, the constituent will be evaluated and a delisting level set in accordance with the methodology used to set delisting levels for the other constituents.
mg/kg—milligrams per kilogram.
mg/l—milligrams per liter.

These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific levels found in a single sample.

III. EPA's Evaluation of This Petition

A. How did EPA evaluate the information submitted?

In developing this proposal, we considered the original listing criteria and evaluated additional factors required by the Hazardous and Solid Wastes Amendments of 1984 (HSWA). See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (3). These factors include: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of these constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA identified plausible exposure routes (ground water, surface water, air) for hazardous constituents released from the waste in an improperly managed Subtitle D landfill. To evaluate the waste, we used the Delisting Risk Assessment Software program (DRAS), a Windows based software tool, to estimate the potential release of hazardous constituents from the waste and to predict the risk associated with those releases. For a detailed description of the DRAS program and revisions see: 65 FR 58015, September 27, 2000; 65 FR 75637, December 4, 2000; 65 FR 75897, December 5, 2000; and 67 FR 10341, March 7, 2002.

B. What did EPA conclude about this waste?

EPA compared the analytical results submitted by KCAP to the maximum allowable levels calculated by the DRAS for an annual volume of 2,000 cubic yards. The maximum allowable levels for constituents detected in the waste or the waste leachate are summarized in the table above. All constituents compared favorably to the allowable levels.

The table also includes the maximum allowable levels in groundwater at a potential receptor well, as evaluated by DRAS. These levels are the more conservative of either the Safe Drinking Water Act Maximum Contaminant Level (MCL) or the health-based value calculated by DRAS based on the target cancer risk level of 1×10^{-6} or the target hazard quotient of one.

EPA also used the DRAS program to estimate the aggregate cancer risk and hazard index for constituents detected in the waste. The aggregate cancer risk is the cumulative total of all individual constituent cancer risks. The hazard index is a similar cumulative total of non-cancer effects. The target aggregate cancer risk is 1×10^{-5} and the target hazard index is one. The wastewater treatment sludge at KCAP met both of these criteria.

IV. Proposal To Delist Waste From Kansas City Assembly

A. What is EPA proposing?

Today the EPA is proposing to conditionally exclude or delist 2,000 cubic yards annually of wastewater treatment sludge generated at KCAP from conversion coating on aluminum.

B. What are the terms of this exclusion?

Ford must dispose of the KCAP waste in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. Ford must verify on a quarterly basis that the concentrations of the constituents of concern in the KCAP sludge do not exceed the allowable levels set forth in this exclusion. The list of constituents for verification is based on the concentration and frequency of occurrence of constituents of concern in Ford's KCAP sludge and in wastes generated by the majority of facilities participating in the expedited process to delist F019. This exclusion applies only to a maximum annual volume of 2,000 cubic yards and is effective only if all conditions contained in this rule are satisfied.

C. What are the maximum allowable concentrations of hazardous constituents in the waste?

Concentrations of the following constituents measured in the TCLP (or OWEP, where appropriate) extract of the waste must not exceed the following levels (mg/L): barium—100; chromium—5; mercury—0.155; nickel—90; thallium—0.282; zinc—898; cyanides—11.5; ethyl benzene—42.6; toluene—60.8; total xylenes—18.9; bis(2-ethylhexyl) phthalate—0.365; p-cresol—11.4; 2,4-dinitrotoluene—0.13; formaldehyde—343; and napthalene—0.728. The total concentrations in the waste of the following constituents must not exceed the following levels (mg/kg): chromium 760000; mercury—10.4; thallium—116000; 2,4-dinitrotoluene—100000; and formaldehyde—6880.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58

FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility and does not have a significant economic impact on a substantial number of small entities, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule is not subject to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) because this rule will affect only a particular facility. Therefore, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule.

This rule also is not subject to Executive Order 13045,''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule.

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f). Authority for this action has been delegated to the Regional Administrator (61 FR 32798, June 25, 1996).

Dated: November 16, 2006.

John B. Askew,

Regional Administrator, Region 7.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of part 261 the following wastestream is added in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Ford Motor Company Kansas City Assembly Plant.	Claycomo, Missouri	Wastewater treatment sludge, F019, that is generated at the Ford Motor Company (Ford) Kansas City Assembly Plant (KCAP) at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). 1. Delisting Levels: (a) The concentrations in a TCLP extract of the waste measured in any sample may not exceed the following levels (mg/L): barium—100; chromium—5; mercury—0.155; nickel—90; thallium—0.282; zinc—898; cyanides—11.5; ethyl benzene—42.6; toluene—60.8; total xylenes—18.9; bis(2-ethylhexyl) phthalate—0.365; p-cresol—11.4; 2,4-dinitrotoluene—0.13; formaldehyde—343; and napthalene—.728; (b) The total concentrations measured in any sample may not exceed the following levels (mg/kg): chromium 760000; mercury—10.4; thallium—116000; 2,4-dinitrotoluene—100000; and formaldehyde—6880. 2. Quarterly Verification Testing: To verify that the waste does not exceed the specified delisting levels, Ford must collect and analyze one representative sample of KCAP's sludge on a quarterly basis. 3. Changes in Operating Conditions: Ford must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process at KCAP significantly change. Ford must handle wastes generated at KCAP after the process change as hazardous until it has demonstrated that the waste continues to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and Ford has received written approval from EPA.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		4. Data Submittals: Ford must submit the data obtained through verification testing at KCAP or as required by other conditions of this rule to EPA Region 7, Air, RCRA and Toxics Division, 901 N. 5th, Kansas City, Kansas, 66208. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. Ford must compile, summarize, and maintain at KCAP records of operating conditions and analytical data for a minimum of five years. Ford must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 5. Reopener Language—(a) If, anytime after disposal of the delisted waste, Ford possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste at KCAP indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then Ford must report such data in writing to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Ford in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Ford with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Ford shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days Ford presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
*	*	* * * * * *

[FR Doc. E6–21603 Filed 12–19–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7680]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This proposed rule involves no policies

that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Lee County, Florida, and Incorporated Areas				
Bayshore Creek	Approximately 600 feet downstream of Jamestown Circle.	+8	+7	Lee County (Unincorporated Areas).
	At Nalle Grade Road	None	+23	
Bedman Creek/Dog Canal.	Approximately 700 feet downstream of Palm Beach Boulevard.	+7	+8	Lee County (Unincorporated Areas).
	Approximately 2.6 miles upstream of Weir S–D–2.	None	+26	
Billy Creek	At upstream side of Veronica Shoemaker Boulevard.	+7	+8	Lee County (Unincorporated Areas), City of Fort Myers.
	Approximately 0.4 mile upstream of Oritz Circle.	None	+17	
Caloosahatchee River	At intersection of Cohn Road and Marsh Cove Lane.	+7	+8	Lee County (Unincorporated Areas), City of Cape Coral, City of Fort Myers.
	Approximately 0.4 mile south of intersection of Tarpon Estates Boulevard and Tarpon Estates Court.	+10	+11	
Carrell Canal	Approximately 900 feet upstream of confluence with Caloosahatchee River.	None	+7	City of Fort Myers.
	Approximately 375 feet upstream of Evans Avenue.	None	+13	
Chapel Branch Creek	Approximately 600 feet downstream of Samville Road.	+7	+8	Lee County (Unincorporated Areas).
	Approximately 650 feet upstream of Rich Road.	None	+20	
Charlotte Harbor	At intersection of Kismet Parkway and Burnt Stove Road.	+7	+6	Lee County (Unincorporated Areas), City of Cape Coral.
	Approximately 0.7 mile west from Old Burnt Stove Road and 48th Terrace intersection (follow Yucca Creek).	+11	+10	Lee County (Unincorporated Areas).
Cypress Creek	Approximately 800 feet downstream of North River Road.	+7	+8	Lee County (Unincorporated Areas).
	Approximately 3.0 miles upstream of North River Road.	None	+18	
Daughtrey Creek	Approximately 0.4 mile downstream of Bayshore Road.	+8	+7	Lee County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Nalle Grade Road.	None	+24	
East Branch	At downstream side of Bayshore Road	+8	+7	Lee County (Unincorporated Areas).
Daughtrey Creek	At Nalle Grade Road	None	+23	
East Branch	Approximately 0.2 mile downstream of Pine Island Road.	None	+7	Lee County (Unincorporated Areas), City of Cape Coral.
Yellow Fever Creek	At upstream side of U.S. 41 Culvert	+17	+18	
Estero Bay	Approximately 0.3 mile west of intersection of Baybridge Boulevard and Bridge Run Court.	+10	+11	Lee County (Unincorporated Areas), City of Bonita Springs, Town of Fort Myers Beach.
	Approximately 0.5 mile west of intersection of Redfish Street and Spring Creek Drive.	+13	+15	
Estero River	Approximately 0.4 mile downstream of South Tamiami Trail.	+10	+11	Lee County (Unincorporated Areas).
	Approximately 0.4 mile upstream of I–75	None	+21	
Fichter Creek	Approximately 1,000 feet upstream of the confluence with Caloosahatchee River.	None	+7	Lee County (Unincorporated Areas).
	Approximately 50 feet upstream of Fichters Creek Lane.	None	+15	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Ford Street Canal	At upstream side of Gallee Way	None	+9	City of Fort Myers.
	Approximately 200 feet downstream of Hanson Street.	None	+18	
Gulf of Mexico	Approximately 1,000 feet west of the Pelican Pass and Charlotte Harbor Mouth (Cayo Costa Island).	+7	+8	Lee County (Unincorporated Areas), City of Bonita Springs, City of Sanibel, Town of Fort Myers Beach.
	Approximately 500 feet west of intersection of Estero Boulevard and Hickory Boulevard.	+18	+20	
Halfway Creek	Approximately 0.6 mile downstream of U.S. Route 41.	+10	+11	Lee County (Unincorporated Areas).
	Approximately 100 feet upstream of Railroad	None	+16	
Halls Creek	Approximately 500 feet upstream of North River Road.	None	+7	Lee County (Unincorporated Areas).
	Approximately 0.6 mile upstream of North River Road.	None	+13	
Hancock Creek	Approximately 100 feet upstream of Barrett Road.	None	+7	Lee County (Unincorporated Areas), City of Cape Coral.
	Approximately 100 feet upstream of Diplomat Parkway.	None	+11	
Hickey Creek	Approximately 1,000 feet upstream of Palm Beach Boulevard.	+7	+8	Lee County (Unincorporated Areas).
	At the confluence of Hickey Creek Drainageway.	+9	+10	
Hickey Creek ..... (upstream of Hickey Creek Drainageway).	At confluence of Hickey Creek	+9	+10	Lee County (Unincorporated Areas).
	Approximately 0.8 mile downstream of Bateman Road.	+11	+10	
Hickey Creek Drainageway.	At the confluence with Hickey Creek	+9	+10	Lee County (Unincorporated Areas).
	Approximately 1.1 miles upstream of 17th Street.	None	+22	
Kickapoo Creek	At upstream side of Bayshore Road	+7	+8	Lee County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Old Bayshore Road.	+12	+8	
L–3 Canal	At the confluence with L Canal	None	+8	Lee County (Unincorporated Areas), City of Fort Myers.
	Approximately 0.4 mile upstream of Fowler Street.	None	+14	
Leitner Creek	Approximately 800 feet upstream of Terry Street.	+10	+12	City of Bonita Springs.
	Approximately 0.3 mile upstream of I–75	None	+14	
Manuels Branch	At upstream side of McGregor Boulevard	None	+7	City of Fort Myers.
	Approximately 975 feet upstream of Evans Avenue.	None	+12	
Marsh Point Creek	At upstream side of Bayshore Road	+10	+7	Lee County (Unincorporated Areas).
	At upstream side of Tucker Lane	+16	+15	
Matlacha Pass	Approximately 0.5 mile east of intersection of Game Bird Lane and Ficus Tree Lane.	+7	+6	Lee County (Unincorporated Areas), City of Cape Coral.
	Approximately 0.7 mile east of intersection of Tropical Point Drive and Cove Street.	+8	+11	
Mullock Creek	Approximately 300 feet downstream of Constitution Circle.	None	+10	Lee County (Unincorporated Areas).
	At Oriole Road	None	+15	
Mullock Creek Tributary.	Approximately 0.2 mile downstream of South Tamiami Trail.	+10	+11	Lee County (Unincorporated Areas).
	Approximately 150 feet upstream of South Tamiami Trail.	None	+13	
North Colonial Waterway.	At the confluence with Ten Mile Canal	None	+17	City of Fort Myers.
	Approximately 400 feet upstream of Milan Drive.	None	+17	
Oak Creek	At Imperial Street	+10	+11	City of Bonita Springs.
	Approximately 1,000 feet upstream of Imperial Street.	+10	+11	
Orange River	Approximately 2.5 miles upstream of Palm Beach Boulevard.	+7	+8	Lee County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 2.5 miles upstream of Buckingham Road.	None	+17	
Owl Creek	Approximately 1,000 feet downstream of North River Road.	+8	+7	Lee County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Shirley Lane.	None	+20	
Palm Creek	At downstream side of Bayshore Road	+8	+7	Lee County (Unincorporated Areas).
	Approximately 50 feet downstream of Sharon Drive.	None	+22	
Pine Island Sound	Approximately 500 feet west of intersection of State Route 767 and Helen Road.	+7	+6	Lee County (Unincorporated Areas), City of Sanibel.
	At intersection of Seair Lane and Sol Vista Drive on Captiva Island.	+10	+12	
Popash Creek	Approximately 0.3 mile upstream of Bayshore Road.	+8	+7	Lee County (Unincorporated Areas).
	At County boundary	+26	+25	
Powell Bypass	At Weir Valencia	+14	+12	Lee County (Unincorporated Areas).
	Approximately 2.0 miles upstream of Mellow Drive.	None	+20	
Powell Creek	Approximately 0.3 mile upstream of Brooks Road.	+8	+7	Lee County (Unincorporated Areas).
	At Weir Valencia	+14	+12	
Powell Creek Tributary No. 1	At confluence with Powell Creek	+11	+7	Lee County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Powell Creek.	+11	+10	
San Carlos Bay	At intersection of Sanibel Boulevard and Bay View Avenue.	+8	+7	Lee County (Unincorporated Areas), City of Cape Coral, City of Sanibel, Town of Fort Myers Beach.
	Approximately 500 feet south of intersection of Punta Rassa Road and McGregor Boulevard.	+17	+20	
Six Mile Cypress	At confluence with Ten Mile Canal	None	+13	Lee County (Unincorporated Areas), City of Fort Myers.
Slough	At State Route 82	None	+22	
South Branch	At confluence with Estero River	None	+14	Lee County (Unincorporated Areas).
	At upstream side of I–75	None	+17	
Spanish Canal	At confluence with Spanish Creek	None	+13	Lee County (Unincorporated Areas).
	Approximately 0.8 mile upstream of confluence with Spanish Creek.	None	+18	
Spanish Creek	Approximately 900 feet upstream of confluence with Caloosahatchee River.	+7	+8	Lee County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Persimmon Ridge Road.	None	+19	
Spring Creek	Approximately 500 feet downstream of Railroad.	+10	+11	City of Bonita Springs.
	Approximately 0.4 mile upstream of Railroad	None	+13	
Stricklin Gully	At confluence with Trout Creek/Curry Lake Canal.	None	+13	Lee County (Unincorporated Areas).
	Approximately 1.4 miles upstream of confluence with Trout Creek/Curry Lake Canal.	None	+18	
Stroud Creek	Approximately 100 feet upstream of Bayshore Road.	+8	+7	Lee County (Unincorporated Areas).
	Approximately 0.2 mile upstream of St. Paul Road.	None	+23	
Telegraph Creek	Approximately 1,000 feet upstream of confluence with Caloosahatchee River.	+7	+8	Lee County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Telegraph Creek Lane.	None	+18	
Ten Mile Canal	Approximately 1,500 feet downstream of Briarcliff Road.	+10	+11	Lee County (Unincorporated Areas), City of Fort Myers.
	At Hanson Street	None	+17	
Trout Creek/Curry Lake Canal.	At downstream side of North River Road	+7	+8	Lee County (Unincorporated Areas).
	At County boundary	None	+23	
Winkler Canal	Approximately 700 feet upstream of the confluence with Caloosahatchee River.	None	+7	City of Fort Myers.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Yellow Fever Creek ...	Approximately 125 feet upstream of Evans Avenue.	None	+14	Lee County (Unincorporated Areas), City of Cape Coral.
	Approximately 1,000 feet downstream of Pine Island Road.	None	+7	
	Approximately 0.5 mile upstream of Littleton Road.	None	+11	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Bonita Springs

Maps are available for inspection at the City of Bonita Springs Administration Office, 9101 Bonita Beach Road, Bonita Springs, Florida.
Send comments to The Honorable Jay Arend, Mayor of the City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, Florida 34135.

City of Cape Coral

Maps are available for inspection at the City of Cape Coral Community Development Department, 1015 Cultural Park Boulevard, Cape Coral, Florida.
Send comments to The Honorable Eric Feichthaler, Mayor of the City of Cape Coral, P.O. Box 150027, Cape Coral, Florida 33915–0027.

City of Fort Myers

Maps are available for inspection at the City of Fort Myers Community Development Department, 1825 Hendry Street, Suite 101, Fort Myers, Florida.
Send comments to Mr. Anthony Shoemaker, Fort Myers City Manager, P.O. Box 2217, Fort Myers, Florida 33902.

Town of Fort Myers Beach

Maps are available for inspection at the Town of Fort Myers Beach Council Chambers, 2523 Estero Boulevard, Fort Myers Beach, Florida.
Send comments to The Honorable Dennis Boback, Mayor of the Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, Florida 33931.

City of Sanibel

Maps are available for inspection at the Sanibel City Hall, Planning Department, 800 Dunlop Road, Sanibel, Florida.
Send comments to The Honorable Carla Johnston, Mayor of the City of Sanibel, 800 Dunlop Road, Sanibel, Florida 33957.

Lee County (Unincorporated Areas)

Maps are available for inspection at the Lee County Community Development Department, 1500 Monroe Street, 2nd Floor, Fort Myers, Florida.
Send comments to Ms. Tammy Hall, Chairperson for the Lee County Board of Commissioners, P.O. Box 398, Fort Myers, Florida 33902–0398.

Burke County, North Carolina and Incorporated Areas

Dye Branch	At the confluence with McGalliard Creek	None	+1,078	Burke County (Unincorporated Areas), Town of Valdese.
	Approximately 655 feet upstream of Praley Street.	None	+1,193	
Sandy Run	Approximately 1.7 miles upstream of the confluence with Hunting Creek.	None	+1,113	Burke County (Unincorporated Areas).
	Approximately 2.4 miles upstream of the confluence with Hunting Creek.	None	+1,156	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Burke County (Unincorporated Areas)

Maps are available for inspection at the Burke County Planning and Development Department, 110 North Green Street, Morganton, North Carolina.
Send comments to Mr. Ron Lewis, Burke County Manager, P.O. Box 219, Morganton, North Carolina 28680.

Town of Valdese

Maps are available for inspection at the Valdese Town Hall, 121 Faet Street, Valdese, North Carolina.
Send comments to The Honorable James Hatley, Mayor of the Town of Valdese, P.O. Box 339, Valdese, North Carolina 28690.

Catawba County, North Carolina and Incorporated Areas

Cline Creek Tributary 2.	At the confluence with Cline Creek	None	+898	Catawba County (Unincorporated Areas), City of Conover.
	Approximately 1,300 feet upstream of I–40 ..	None	+911	
Dellinger Creek	At the confluence with Elk Shoal Creek	+850	+851	Catawba County (Unincorporated Areas).
	Approximately 725 feet upstream of Rest Home Road.	None	+960	
Elk Shoal Creek	Approximately 2,750 feet upstream of the confluence with Catawba River.	+848	+849	Catawba County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 2,000 feet upstream of Rest Home Road.	+942	+943	
East Tributary	At the confluence with McLin Creek	None	+943	Catawba County (Unincorporated Areas), City of Conover.
McLin Creek	Approximately 1,000 feet upstream of Keisler Road Southeast.	None	+982	
Geitner Branch	At the confluence with Henry Fork	+887	+890	Catawba County (Unincorporated Areas), City of Hickory.
	Approximately 1,900 feet upstream of 7th Avenue Southwest.	None	+1,080	
Long Creek	At the confluence with McLin Creek	+861	+860	Catawba County (Unincorporated Areas), City of Claremont, City of Conover.
	Approximately 1,400 feet upstream of Railroad.	None	+988	
Mull Creek	Approximately 1,000 feet upstream of the confluence with Lyle Creek.	+820	+819	Catawba County (Unincorporated Areas), City of Claremont, City of Conover.
	Approximately 500 feet upstream of 9th Avenue Northeast.	None	+1,002	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Catawba County (Unincorporated Areas)

Maps are available for inspection at the Catawba County Planning and Zoning Department, 100 A Southwest Boulevard, Newton, North Carolina.
Send comments to Mr. Tom Lundy, Catawba County Manager, P.O. Box 389, Catawba, North Carolina 28658.

City of Claremont

Maps are available for inspection at the City of Claremont Planning Department, 3288 East Main Street, Claremont, North Carolina.
Send comments to The Honorable Glenn A. Morrison, Mayor of the City of Claremont, 3288 East Main Street, Claremont, North Carolina 28610.

City of Conover

Maps are available for inspection at the Conover City Hall, 101 First Street East, Conover, North Carolina.
Send comments to The Honorable Bruce Eckard, Mayor of the City of Conover, P.O. Box 549, Conover, North Carolina 28613.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 13, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–21681 Filed 12–19–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[061107292–6292–01;110306A]

RIN 0648–AU81

Sea Turtle Conservation; Observer Requirement for Fisheries

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes a regulation to require vessels in state and federal fisheries operating in the territorial seas or exclusive economic zone of the United States that are identified through the annual determination process specified in the rule to take observers upon NMFS request. NMFS proposes this measure to learn more about sea turtle interactions with fishing operations, to evaluate existing measures to reduce sea turtle takes, and to determine whether additional measures to address sea turtle takes may be necessary. NMFS will pay the direct costs of the observer. NMFS also proposes to extend the number of days from 30 to 180 that the agency may place observers in response to an appropriate determination by the Assistant Administrator under its existing regulations.

DATES: Written comments must be received on or before February 20, 2007.

ADDRESSES: Comments on this proposed rule and requests for copies of the Environmental Assessment and Regulatory Impact Review (EA/RIR) should be addressed to the Chief, Marine Mammal and Turtle Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Tanya Dobrzynski, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Purpose

Under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.*, NMFS is authorized to implement programs to conserve marine life listed as endangered or threatened.

All sea turtles that occur in U.S. waters are listed as either endangered or

threatened under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.*. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green sea turtles in Florida and on the Pacific coast of Mexico and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is one of the main sources of sea turtle injury and mortality nationwide. Section 9 of the ESA prohibits the take (including killing, injuring, capturing, harming and harassing), even incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles. 50 CFR 223.306. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to section 7 or 10, respectively, of the ESA. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. In some cases, NMFS has been able to make this determination because the fishery is conducted with a modified gear or modified fishing practice that NMFS has been able to evaluate. However, for some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-turtle interactions. Therefore, any incidental take of sea turtles in those fisheries remains unauthorized.

The most effective way for NMFS to learn more about sea turtle-fishery interactions is to place observers aboard fishing vessels. NMFS is proposing this regulation to establish procedures under which each year NMFS will identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers. NMFS will pay the direct costs (e.g., salary, insurance) for the observer. Once selected, a fishery will be eligible to be observed for five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to determine whether incidental takes are occurring, to evaluate whether existing measures are minimizing or preventing interactions, and to determine whether additional measures are needed to conserve turtles.

Other Procedures for Observer Placement

NMFS has established a regulatory procedure to place observers on vessels contingent upon a determination by the NMFS Assistant Administrator that the unauthorized take of sea turtles may be likely to jeopardize their continued existence. 50 CFR 223.206(d) (4). In this regulation, NMFS limited observer coverage requirements within a fishery to 30 days. NMFS has used this procedure to address immediate observer needs when fishery activity and relatively high sea turtle strandings have occurred simultaneously in a particular area. However, these temporary observer requirements are designed to respond to acute problems, and not for the design and implementation of monitoring programs that yield statistically valid information, which is the purpose of the observer requirements contained in this proposed rule. Further, because 30 days does not always provide the opportunity to investigate the cause of an event, such as elevated sea turtle strandings, NMFS is also proposing that observer coverage requirements under 50 CFR 223.206(d)(4) may remain effective for 180 days, with a possible 60-day extension. The combined 240 days is consistent with the emergency regulatory provision in section 4(b)(7) of the ESA.

As a condition of authorizing incidental take in certain fisheries, NMFS has also implemented observer coverage requirements under the authority of the ESA on a fishery-by-fishery basis, such as in the shrimp trawl, summer flounder trawl, and Virginia pound net fisheries. These requirements have been implemented only after data from strandings, temporary observer coverage, or other sources indicated that prohibited sea turtle takes were occurring, and as part of a regulatory program to address the sea turtle takes in that fishery.

NMFS has also placed observers on federally-managed vessels under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 1996 (Magnuson-Stevens Act), and the Marine Mammal Protection Act, as amended in 1994 (MMPA), to document fish bycatch and incidental mortality and serious injury of marine mammals, respectively. The Magnuson-Stevens Act allows NMFS to require observers on fisheries managed under a Federal fishery management plan, while the MMPA allows NMFS to require observers in both Federal and non-federal fisheries depending on the determined level of interaction between fisheries and marine mammals. Secondary to collecting information on fish and marine mammal bycatch through placement of observers on fishing vessels via the Magnuson-Stevens Act and MMPA, NMFS has also collected data on sea turtle interactions in fisheries.

However, there are several limitations and restrictions to using the MMPA or Magnuson-Stevens Act to place observers to monitor potential sea turtle interactions. The Magnuson-Stevens Act only provides NMFS authority to require observers on vessels in fisheries managed under a Federal fishery management plan. Thus, the authority primarily covers fisheries operating in Federal waters. The MMPA only allows NMFS to require observers on fisheries that have been listed on the annual List of Fisheries as Category I (where incidental mortality and serious injury of marine mammals is considered ''frequent'') and Category II (where incidental mortality and serious injury of marine mammals is considered ''occasional'') (16 U.S.C. 1387(c)), but not Category III (where there is a remote likelihood of or no known incidental mortality and serious injury of marine mammals), under which the majority of fisheries are listed. Given that some state and Category III fisheries may be a concern for sea turtle takes, neither the MSA nor the MMPA provides broad enough authority to monitor fisheries that are likely to incidentally take sea turtles. Additionally, because NMFS has largely relied on the MMPA to monitor non-federal fisheries, many monitoring programs are designed primarily to monitor marine mammal bycatch in fishing gear and not necessarily to optimize observation of sea turtle takes. For instance, the sampling regime for marine mammals may not adequately cover times and areas where sea turtle interactions are most likely to occur. Due to observer sampling designs that focus on marine mammal takes, the use of MMPA authority to monitor fisheries for sea turtle bycatch is not optimal. To obtain statistically representative data on sea turtle takes in various fisheries, NMFS must design sampling programs based on sea turtle distribution and abundance and directed toward those gear types and fisheries that are a priority concern for sea turtle recovery.

NMFS has also relied on using voluntary observer coverage to obtain data in several non-federally managed fisheries. For example, from November

1 - 20, 1999, 56 dead sea turtles washed ashore in a small area of Pamlico Sound, North Carolina, in the vicinity of Hatteras and Ocracoke Inlets. Thirty-five of the sea turtles were Kemp's ridleys, the most endangered species of sea turtle. Many sink gillnet fishing vessels were operating in the vicinity. North Carolina state observers were placed on a limited number of the gillnet boats to monitor sea turtle interactions. Because both state and NMFS' observer placement was voluntary, many of the fishermen elected not to carry observers, which resulted in limited coverage in areas where sea turtle interactions were believed most likely to occur. Adequate sampling occurred only after North Carolina received an ESA section 10(a)(1)(B) incidental take permit (67 FR 67150, November 4, 2002) and observer coverage was a requirement of the permit. These events in North Carolina highlight that a voluntary observer program limits the extent of coverage and hinders the collection of reliable data.

Sea Turtle/Fisheries Interactions

Numerous gear types have been implicated in takes of sea turtles along the Atlantic, Gulf of Mexico, and Pacific coasts. Because the issue of incidental takes is largely due to the type of fishing gear used, commercial and recreational fisheries in state and federal waters may take sea turtles. Data available on the extent of sea turtle interactions vary by gear type, area, and season. Nonetheless, certain types of gear are more prone to incidentally capturing sea turtles than others, depending on the way the gear is fished and the time and area within which it is fished.

Fisheries that use, for example, trawls, gillnets, seines, pound nets, traps, pots, dredges, longlines, and hook and line are potential sources of sea turtle take. Incidental take has been documented in these gear types where the distribution of sea turtles and fisheries overlaps. For example, NMFS has used alternative monitoring platforms to observe the VA pound net fishery. This monitoring revealed that sea turtle takes are a concern in the VA pound net fishery. As a result, NMFS has implemented management measures aimed at reducing sea turtle interactions in pound net leaders in the southern portion of the Chesapeake Bay from May 6–July 15 of each year, when sea turtles are known to be present (69 FR 24997, May 5, 2004). NMFS conducted an ESA section 7 consultation on the pound net fishery and determined that the fishery with the management measures was not likely to jeopardize sea turtles and the agency was then able to authorize incidental take in the fishery. While these measures may be reducing the number of sea turtle takes in pound nets, sea turtle strandings in the area have continued despite the management measures. Other fisheries, such as inshore gillnet and purse seine fisheries in the area, may also be contributing to the problem and need to be further evaluated.

There are similar examples in other areas around the United States where more comprehensive and targeted observer coverage on fishing vessels is needed to better grasp and address the problem of sea turtle takes incidental to fishing activities, such as the shrimp fishery in the state and federal waters of the southeast United States and the Gulf of Mexico. This proposed rule would enable NMFS to monitor gear types, such as try nets and skimmer trawls, used in this fishery, which are not currently required to use turtle excluder devices but that have been documented to interact with sea turtles. Pot/trap and gillnet fisheries in the state waters of the U.S. have also been documented to interact with sea turtles; therefore, more information is needed on potential sea turtle interactions in these gear types/fisheries to better evaluate them. In addition, long-term, comprehensive coverage is needed to fill information gaps on sea turtle takes.

Thus, NMFS proposes to amend the ESA regulations to specify that NMFS may place observers on recreational or commercial fishing vessels. Consistent, regular monitoring via placement of observers on fishing vessels is needed to gather useful data on sea turtle takes and, where necessary, to evaluate existing measures and develop new management measures to reduce sea turtle take in certain gear types. This proposed action, issued under the authority of the ESA, is necessary to implement the prohibitions of take of listed species and to conserve sea turtles listed as threatened or endangered.

Observer Program Design

The design of any observer program implemented under this rule, including how observers would be allocated to individual vessels, would vary among fisheries, fishing sectors, gear types, and geographic regions and would ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. During the program design, NMFS would be guided by the following standards in the distribution and placement of observers among fisheries identified in annual determinations and vessels in those particular fisheries:

(1) The requirements to obtain the best available scientific information;

(2) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

Consistent with 16 U.S.C. 1881(b), vessels where the facilities for accommodating an observer or carrying out observer functions are so inadequate or unsafe (due to size or quality of equipment, for example) that the health or safety of the observer or the safe operation of the vessel would be jeopardized, would not be required to take observers under this rule.

Observer programs designed or carried out in accordance with this regulation would be required to be consistent with existing observer-related NOAA policies and regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), Observer Health and Safety regulations (50 CFR part 600), and other relevant policies.

Annual Determination Process

The Assistant Administrator for Fisheries, NOAA (AA) will make an annual proposed and final determination identifying which fisheries may require observer coverage to monitor potential interactions with sea turtles. The determination will be based on the best available scientific, commercial, or other information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; or qualitative data from logbooks or fisher reports.

The AA will use the most recent version of the annually published MMPA List of Fisheries (LOF) as the universe of commercial fisheries for consideration in addition to known information on non-commercial fisheries in a given area. The LOF includes all known state and federal commercial fisheries that occur in U.S. waters. The categorization scheme of fisheries on the LOF would not be relevant to this process; all fisheries in the LOF would be used as the universe of state and federal commercial fisheries to be considered for monitoring under this proposed rule. Unlike the LOF process, recreational fisheries likely to interact with sea turtles on the basis of the best available information may also

be included in the determination of fisheries to be monitored under this rule.

On an annual basis, the AA, in consultation with Regional Administrators and Science Center Directors, will determine which fisheries NMFS intends to monitor. The fisheries considered for monitoring under this proposed rule will be published as both a proposed and final determination in the **Federal Register**. Notice of the proposed determination will also be made in writing to individuals permitted for each fishery identified for monitoring. NMFS will also notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and any other means as appropriate. Once included in the final determination, a fishery will remain eligible for observer coverage for five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines that more than five years is needed to obtain sufficient scientific data, NMFS must include the fishery in the AA's annual proposed determination again prior to the end of the fifth year. As part of its annual determination, NMFS will include, to the extent practicable, information on the fisheries or gear types to be sampled, geographic and seasonal scope of coverage, or any other relevant information. A 30-day delay in effective date for implementing observer coverage will follow the annual determination, except for those fisheries included in earlier annual determinations within the previous five years.

The timing of this process should be coordinated to the extent possible with the annual LOF publication process, as specified in 50 CFR 229.8.

Classification

The AA has determined that this proposed rule is consistent with the ESA and with other applicable law.

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

The AA prepared an environmental assessment for this proposed rule. A copy of the EA is available (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

For the purpose of this certification, all fishermen affected by this rule will be considered individual small entities. Given the nature of sampling programs and limited NMFS resources, this rule will likely affect less than one hundred fishermen at any given time.

Individual small entities will incur no direct costs for complying with this observer requirement as NMFS will pay the direct costs associated with observer coverage (e.g., observer and related expenses). Potential indirect costs to individual small entities required to take observers under this rule may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For all these potential indirect costs, it is important to note that, due to limited resources and sampling protocols, effective monitoring will rotate observers among a limited number of vessels in a fishery at any given time. Thus, the potential indirect costs to individual small entities further described below are expected to be minimal since observer coverage would only be required for a small percentage of an individual's total annual fishing time.

Lost space on deck for catch is a potential indirect cost to small entities. The indirect costs would potentially be less room to store catch or to house another active fishermen. However, in accordance with Observer Health and Safety standards, vessels too small to accommodate an observer will not be required to take an observer under this rule. Thus, the individuals most likely to be affected by this indirect cost, will not likely be required to accommodate an observer.

Lost bunk space is a potential cost in that a vessel may need to limit the number of working fishermen onboard to accommodate an observer for overnight trips. While this could result in lost fishing effort, and therefore lost catch, this would only be a potential cost to that subset of fishing vessels for which overnight fishing trips are a regular occurrence. Furthermore, given that larger vessels are usually used for fishing involving multi-day trips, the circumstances in which an observer would significantly displace fishing effort due to lost bunk space are not expected to occur with frequency. Thus, for this and the reasons stated above, the potential indirect cost of lost bunk space to individual small entities resulting from this rule is expected to be minimal.

Lost fishing time due to time needed to process sea turtle bycatch data is another potential indirect cost to fishermen of this observer requirement. However, while individually significant, sea turtle bycatch events are generally rare occurrences. Thus, the need to process such data is not expected to occur on a frequent basis, rendering this an insignificant impact on individual fishermen.

This rule proposes an annual notification process whereby the Assistant Administrator for Fisheries (AA) would make an annual determination identifying which fisheries require observer coverage for the purpose of monitoring potential sea turtle takes. The determination will be based on the best available commercial and biological data and will be published in the **Federal Register** as both proposed and final notices to the public that the AA is implementing the requirements specified in this section. A 30-day delay in effective date for implementing observer coverage will follow the annual notification, except for those fisheries that were listed in the preceding annual notification or where the AA has determined that there is good cause to make the rule effective without a 30-day delay. Annual notification will include, but not be limited to, information on the fisheries to be sampled, geographic and seasonal scope, and level of coverage.

For the reasons stated herein, the proposed rule to establish mandatory observer coverage is not likely to impose a significant economic impact on a substantial number of small entities.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action to the appropriate officials of affected state, local, and/or tribal governments to solicit their input on the development of the observer program in this proposed rule.

List of Subjects

50 CFR Part 222

Administrative Practice and Procedure, Endangered and threatened species, Exports, Imports, Marine mammals.

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: December 14, 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 parts 222 and 223 are proposed to be amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 is amended by deleting Section 222.403 also issued under 16 U.S.C. 1361 *et seq*.

Authority: 16 U.S.C. 1531 *et seq*.; 16 U.S.C. 742a *et seq*.

2. New subpart D is added to read as follows:

Subpart D—Observer Requirement

Sec.
222.401 Observer requirement.
222.402 Annual determination of fisheries to be observed; notice and comment.
222.403 Duration of selection; effective date.
222.404 Observer program sampling.

Subpart D Observer Requirement

§ 222.401 Observer requirement.

Any commercial or recreational fishing vessel which operates within the territorial seas or exclusive economic zone of the United States in a fishery that is identified through the annual determination process specified in § 222.402 must carry aboard a NMFS-approved observer upon request by the NMFS Assistant Administrator or a NMFS Regional Administrator. NMFS will pay direct costs for the observer. Owners and operators must comply with observer safety requirements specified at 50 CFR 600.745 and the terms and conditions specified in the written notification.

§ 222.402 Annual determination of fisheries to be observed; notice and comment.

(a) The Assistant Administrator, in consultation with Regional Administrators and Science Center Directors, will make an annual determination identifying which fisheries the agency intends to observe. This determination will be based on the following criteria:

(1) The extent to which the fishery operates in the same waters and at the same time as sea turtles are present;

(2) The extent to which:

(i) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(ii) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(3) The extent to which NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

(b) The Assistant Administrator shall publish the proposed determination in the **Federal Register** notice and seek comment from the public. In addition, a written notification of the proposed determination will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owners or operator of the vessel. Additionally, NMFS will notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and any other means as appropriate. The proposed and final determinations will include, to the extent practicable, information on fishing sector, targeted gear type, target fishery, temporal and geographic scope of coverage, or other information, as appropriate.

(c) Fisheries listed on the most recent annual Marine Mammal Protection Act List of Fisheries in any given year, in accordance with 16 U.S.C. 1387, will serve as the universe of commercial fisheries to be considered for inclusion in the annual determination. Select recreational fisheries suspected of interacting with sea turtles may also be included in the annual determination.

(d) Publication of the proposed and final determinations should be coordinated to the extent possible with the annual Marine Mammal Protection Act List of Fisheries process as specified at 50 CFR 229.8.

(e) Inclusion of a fishery included in a proposed or final determination does not constitute a conclusion by NMFS that those participating in the fishery are illegally taking sea turtles.

§ 222.403 Duration of selection; effective date.

(a) Fisheries included in the final annual determination in a given year will remain eligible for observer coverage under this rule for five years, without need for NMFS to include the fishery in the intervening proposed annual determinations, to enable the design of an appropriate sampling program and to ensure collection of scientific data. If NMFS wishes to continue observations beyond the fifth year, NMFS must include the fishery in the proposed annual determination and seek comment, prior to the expiration of the fifth year.

(b) A 30-day delay in effective date for implementing observer coverage will follow the annual notification, except for those fisheries that were included in a previous determination within the preceding five years.

§ 222.404 Observer program sampling.

(a) During the program design, NMFS would be guided by the following standards in the distribution and placement of observers among fisheries and vessels in a particular fishery:

(1) The requirements to obtain the best available scientific information;

(2) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

(b) Consistent with 16 U.S.C. 1881(b), vessels where the facilities for accommodating an observer or carrying out observer functions are so inadequate or unsafe (due to size or quality of equipment, for example) that the health or safety of the observer or the safe operation of the vessel would be jeopardized, would not be required to take observers under this rule.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq*.; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In § 223.206, the second sentence of paragraph (d)(4)(iv) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(4) * * *

(iv) *Procedures*. * * * An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each, except that emergency placement of observers will be effective for a period of up to 180 days and may be renewed for an additional period of 60 days.* * *

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[FR Doc. E6–21739 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D.120806A]

RIN 0648–AV07

Fisheries off West Coast States and in the Western Pacific; Amendment 15 to Pacific Coast Salmon Fishery Management Plan

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

ACTION: Notice of availability of FMP amendment; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) requests public comments on Amendment 15 to the Pacific Coast Salmon Fisheries Management Plan (Plan) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is intended to provide management flexibility in times of low Klamath River fall-run Chinook (KRFC) abundance, while preserving the long-term productive capacity of the stock and thereby ensuring it continues to contribute meaningfully to ocean and river fisheries in the future.

The plan amendment would allow the Council to implement de minimis fisheries in years of low abundance, which: permit an ocean impact rate of no more than 10 percent on age–4 Klamath River fall Chinook, if the projected natural spawning escapement associated with a 10 percent age–4 ocean impact rate, including river recreational and tribal impacts, is between 22,000 and 35,000. If the projected natural escapement associated with a 10 percent age–4 ocean impact rate is less than 22,000, the Council would further reduce the allowable age–4 ocean impact rate to reflect the status of the stock.

DATES: Comments on Amendments 15 must be received on or before February 20, 2007.

ADDRESSES: You may submit comments, identified by I.D. 120806C by an of the following methods:

- E-mail: *salmon2006amend15@noaa.gov*
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include I.D. 120806C in the subject line of the message.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070; or to Rodney R. McInnis, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.
- Fax: 206–526–6426

FOR FURTHER INFORMATION CONTACT: Sarah McAvinchey by phone at 206–526–4323, e-mail at *sarah.mcavinchey@noaa.gov*, or fax at 206–526–6736, Eric Chavez by phone at 508–980–4064, e-mail at *eric.chavez@noaa.gov*, or fax at 508–980–4047, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to the Secretary for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that the Secretary, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Amendment 15 would allow the Council in the case of Klamath River fall Chinook, to implement de minimis fisheries, which would: permit an ocean impact rate of no more than 10 percent on age–4 Klamath River fall Chinook, if the projected natural spawning escapement associated with a 10 percent age–4 ocean impact rate, including river recreational and tribal impacts, is between 22,000 and 35,000. If the projected natural escapement associated with a 10 percent age–4 ocean impact rate is less than 22,000, the Council shall further reduce the allowable age–4 ocean impact rate to reflect the status of the stock. During the preseason planning process to set an allowable age–4 ocean impact rate the Council shall consider the following:

(a) Critically low natural spawner abundance, including the risk of Klamath Basin substocks dropping below crucial genetic thresholds;

(b) A series of low spawner abundance in recent years;

(c) The status of co-mingled stocks;

(d) El Nino or other adverse environmental conditions;

(e) Endangered Species Act considerations; and

(f) Other considerations as appropriate.

When considering these items, the Council shall determine that the final ocean impact rate will not jeopardize the capacity of the fishery to produce the maximum sustainable yield on a continuing basis. Implementation of de minimis fisheries will depend on year specific estimates of ocean abundance and age composition, which will be determined by the Salmon Technical Team (STT) prior to the March Council meeting. Ocean fishery impacts to the returning brood incurred during the previous fall/winter fisheries will be counted against the allowable age–4 ocean impact rate. Annual estimates of fishery catches, spawner escapements, spawner age composition and coded wire tag contributions are usually available by early to mid-January each year for use by the Salmon Technical Team STT and the Klamath River Technical Advisory Team in updating KRFC fishery resource estimates, models, and forecasts. Amendment 15 does not require that a de minimis fishery be implemented if the natural spawner floor is not met. The provisions of Amendment 15 allow the Council to consider implementing a de minimis fishery that would be limited to no more than 10 percent age–4 ocean impact rate based on the above described criteria.

NMFS welcomes comments on the proposed FMP amendment through the end of the comment period. NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendment. A proposed rule to implement Amendment 15 to the Salmon FMP has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on this rule in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on the amendment.

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

Dated: December 14, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–21742 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 244
Wednesday, December 20, 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

December 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: Rate Quotation for Transportation Services.

OMB Control Number: 0560–0235.

Summary of Collection: The Commodity Credit Corporation (CCC) through the Kansas City Commodity Office (KCCO) solicits bids from approved Motor Carriers and Intermodal Marketing Companies for the purpose of providing transportation of agricultural commodities. 49 U.S.C. 13712 authorizes USDA to receive freight rate quotes from approved Motor Carriers and Intermodal Marketing Companies that are compliant with USDA requirements to haul agricultural products for USDA. The Farm Service Agency (FSA) will collect information using form KC–5, Rate Quotation for Transportation Services.

Need and Use of the Information: The information collected will be used by KCCO to: (1) Establish the lowest cost of movement via Motor Carriers or Intemodal Marketing Companies, (2) determine whether the transportation needs of USDA, FSA, and KCCO are being met, and (3) ensure that Motor Carriers and Intermodal Marketing Companies, providing transportation services have both the willingness and the capability to meet these needs.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 164.

Frequency of Responses: Reporting: On occasion; Other (as needed).

Total Burden Hours: 1,681.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–21677 Filed 12–19–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 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) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1980–D, Rural Housing Loans.

OMB Control Number: 0575–0078.

Summary of Collection: The Rural Housing Service (RHS) is a credit agency for rural development for the U.S. Department of Agriculture. Section 517(d) of title V of the Housing Act of 1949, as amended, (Act) provides the authority for the Secretary of Agriculture to issue loan guarantees for the acquisition of new or existing dwellings and related facilities to provide decent, safe, and sanitary living conditions and other structures in rural areas. The Act also authorizes the Secretary to pay the holder of a guaranteed loan the difference between

the rate of interest paid by the borrower and the market rate of interest.

Need and Use of the Information: Information collected is used to determine if borrowers qualify for all assistance. Eligibility for this program includes very low, low, and moderate-income families or persons whose income does not exceed 115% of the median income for the area. The information requested by RHS includes borrower financial information such as household income, assets and liabilities, and monthly expenses. Information requested on lenders is required to ensure lenders are eligible to participate in the GRH program and are in compliance with OMB Circular A–129. If the information was collected less frequently or not at all, the agency could not effectively monitor lenders and assess the program.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 5,869.

Frequency of Responses: Reporting: Monthly; On occasion.

Total Burden Hours: 120,392.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–21678 Filed 12–19–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–831

Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the New Shipper Reviews

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

EFFECTIVE DATE: December 20, 2006.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2006, the Department published a notice of initiation of a review of fresh garlic from the People's Republic of China (''PRC''), covering the period November 1, 2005, through April 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 38607 (July 7, 2006).

The preliminary results are currently due on December 24, 2006. The Department issued supplemental questionnaires to all four new shippers. However, due to a substantial amount of information regarding the production and processing of the merchandise under consideration, the Department requires more time to issue additional supplemental questionnaires to the new shippers. Therefore, pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.214(h)(i)(2), we are extending the preliminary results of this new shipper review.

Extension of Time Limit of Preliminary Results

The Department determines that it would be extraordinarily complicated to complete the preliminary results of these reviews within the current statutory time period. This new shipper review covers four companies, and to conduct the sales and factor analyses for each requires the Department to gather and analyze a significant amount of information pertaining to each company's sales practices and manufacturing methods. The four new shipper reviews involve extraordinarily complicated methodological issues such as the use of intermediate input methodology, potential affiliation issues and the examination of importer information. Additionally, the Department requires more time to evaluate the *bona fide* nature of each company's sales.

Therefore, given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days until April 23, 2007. The final results continue to be due 90 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(h)(i)(2).

Dated: December 14, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–21758 Filed 12–19–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–507–502)

Certain In–Shell Raw Pistachios from Iran: Notice of Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The U.S. Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on certain in–shell raw pistachios from Iran for the period July 1, 2005, through June 30, 2006.

EFFECTIVE DATE: December 20, 2006.

FOR MORE INFORMATION CONTACT: Angelica Mendoza or John Drury, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3019 and (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2006, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on certain in–shell raw pistachios (pistachios) from Iran. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006). In response, on July 31, 2006, Cal Pure Pistachios, Inc. (Cal Pure), a domestic interested party, requested an administrative review of the antidumping duty order on pistachios from Iran for the period of review (POR) of July 1, 2005, through June 30, 2006, with respect to entries of merchandise exported or shipped by Tehran Negah Nima Trading Company (Nima). Respondent Nima did not request an administrative review. On August 25, 2006, the Department initiated an administrative review of Nima. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). On September 18, 2006, the Department issued its antidumping duty questionnaire to Nima. On October 4, 2006, Nima's representative informed the Department that it would not be filing responses to the Department's questionnaire as it did not export or

ship subject merchandise during the POR. See Memorandum to the File from Angelica L. Mendoza, Tehran Negah Nima Trading Company - No Shipments of Certain In–Shell Raw Pistachios from Iran, dated October 5, 2006.

On October 20, 2006, the Department issued a ''No Shipment Inquiry'' to U.S. Customs and Border Protection (CBP) to confirm that there were no shipments or entries of pistachios from Iran exported by Nima during the POR of the instant administrative review. On November 7, 2006, the Department confirmed, based on its internal review of CBP data and the results of its CBP inquiry, there were no entries of merchandise exported or shipped by Nima during the POR. See Memorandum to the File from Angelica L. Mendoza, through Richard O. Weible, Office Director, Tehran Negah Nima Trading Company (Nima) - No Shipments of Certain In–Shell Raw Pistachios from Iran Per CBP Inquiry, dated November 7, 2006. On November 8, 2006, Cal Pure submitted a letter withdrawing its request for an administrative review of shipments or entries of pistachios from Iran exported by Nima. See Letter from Cal Pure dated November 8, 2006.

Rescission of Antidumping Duty Administrative Review

19 C.F.R. 351.213(d)(1) provides that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. In response to Cal Pure's timely withdrawal of its request for an administrative review as well as the fact that Nima had no shipments during the POR pursuant to 19 C.F.R. ¶351.213(d)(3), the Department hereby rescinds the administrative review of the antidumping duty order on pistachios from Iran for the period July 1, 2005, through June 30, 2006.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of the publication of this notice. The Department will direct CBP to assess antidumping duties for Nima at the cash deposit rate in effect on the date of entry for entries during the period July 1, 2005, through June 30, 2006.

Notification to Importers

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

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. ¶351.305(a)(3). 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 the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 C.F.R. ¶351.213(d)(4).

Dated: December 14, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–21764 Filed 12–19–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Wooden Bedroom Furniture from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part

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

EFFECTIVE DATE: December 20, 2006.

SUMMARY: On October 26, 2006 the Department of Commerce (the ''Department'') received a request on behalf of the petitioners, the American Furniture Manufacturers Committee for Legal Trade and its individual members (the ''AFMC'') for a changed circumstances review and a request to revoke in part the antidumping duty (''AD'') order on wooden bedroom furniture from the People's Republic of China with respect to completely upholstered beds that have exposed wooden feet of no more than nine inches in height from the floor. In its October 26, 2006, submission, AFMC stated that it no longer has any interest in antidumping relief from imports of such upholstered beds with respect to the subject merchandise defined in the ''Scope of the Review'' section below. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4474 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department published the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329. On October 26, 2006, AFMC requested revocation in part of the AD order pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended (''the Act''), with respect to completely upholstered beds that have exposed wooden feet of no more than nine inches in height from the floor, as described below.

Scope of the Order

The product covered is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non–wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand–alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe–type cabinets; (4) dressers with framed glass mirrors that are attached to,

incorporated in, sit on, or hang over the dresser; (5) chests–on-chests[1], highboys[2], lowboys[3], chests of drawers[4], chests[5], door chests[6], chiffoniers[7], hutches[8], and armoires[9]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand–up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non–bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate[10]; (9) jewelry armories[11]; (10) cheval mirrors[12] (11) certain metal parts[13] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser–mirror set.

Imports of subject merchandise are classified under subheading 9403.50.9040 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as ''wooden...beds'' and under subheading 9403.50.9080 of the HTSUS as ''other...wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors...framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part

At the request of AFMC, and in accordance with sections 751(d)(1) and 751(b)(1) of the Act and 19 CFR 351.216, the Department is initiating a changed circumstances review of wooden bedroom furniture from the People's Republic of China to determine whether partial revocation of the AD order is warranted with respect to completely upholstered beds that have exposed wooden feet of no more than nine inches in height from the floor. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act, and 19 CFR 351.222(g)(l)(i) and 351.221(c)(3), we are initiating this changed circumstances review and have determined that expedited action is warranted. In accordance with 19 CFR 351.216(c), we find that the petitioners' affirmative statement of no interest constitutes good cause for the conduct of this review. Additionally, our decision to expedite this review stems from the domestic industry's lack of interest in applying the AD order to the specific wooden bedroom furniture (i.e., upholstered beds discussed above) covered by this request.

Based on the expression of no interest by the petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that substantially all of the domestic producers of the like product have no interest in the continued application of the AD order on wooden bedroom furniture to the merchandise that is subject to this request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of the completely upholstered beds from the People's Republic of China that have exposed wooden feet of no more than nine inches in height from the floor.

If the order is revoked with respect to this product, we will add the following language to the list of excluded items included in the scope of the order:

> ''(13) beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor.''

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24'' in width, 18'' in depth, and 49'' in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door lined with felt or felt-like material, with necklace hangers, and a flip-top lid with inset mirror. See Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, (71 FR 38621) (July 7, 2006).

[12] Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50'' that is mounted on a floor-standing, hinged base.

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheading 9403.90.7000.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results in the **Federal Register**. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results. *See* 19 CFR 351.216(e).

If final revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. *See* 19 CFR 351.222(g)(4). The current requirement for a cash deposit of estimated AD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation and preliminary results of review and notice are in accordance with sections 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: December 12, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–21765 Filed 12–19–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 06–00002.

SUMMARY: On December 14, 2006, the U.S. Department of Commerce issued an Export Trade Certificate of Review to Darah Thomas doing business as Necole Shannon Global Export Services (''NSGES''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2005).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR section 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR section 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services, licensing of Technology Rights, and provision of Export Trade Facilitation Services, NSGES, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping.

2. NSGES and individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by NSGES with its distributors in Export Markets.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, NSGES will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. NSGES will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or

the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definition

• ''Supplier'' means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Protection Provided by Certificate

This Certificate protects NSGES and its employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits NSGES from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to NSGES by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of NSGES or (b) the legality of such business plans of NSGES under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 14, 2006.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E6–21726 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121406E]

Gulf of Mexico Fishery Management Council (Council); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Shrimp Effort Management Advisory Panel (AP).

DATES: The Ad Hoc Shrimp Effort Management AP meeting is scheduled to begin at 1 p.m. on Monday, January 8, 2007, recess at 5 p.m., reconvene at 8:30 a.m. on Tuesday, January 9, 2007 and adjourn by 5 p.m.

ADDRESSES: The meeting will be held at the Hilton Houston Hobby Airport, 8181 Airport Blvd., Houston, TX 77061.

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

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Ad Hoc Shrimp Effort Management AP will receive brief presentations on current levels of effort and the levels that could optimize yield from the shrimp fishery. The AP will receive similar briefings on the current level of shrimp trawl bycatch of juvenile red snapper and the maximum level of allowable bycatch that will maintain the current targets for rebuilding the red snapper stock in the Gulf of Mexico. Specifically, the Council has charged the Ad Hoc Shrimp Effort Management AP with the following task:

To develop management recommendations for the shrimp fishery to:

a. Manage effort to reduce red snapper bycatch mortality in the shrimp fishery by 50% from the 2001–03 base line in 2007.

b. Develop additional measures to reach the red snapper bycatch mortality reduction goals for the shrimp fishery established in the red snapper rebuilding plan.

The Ad Hoc Shrimp Effort Management AP consists of commercial shrimp fishermen, dealers, processors, and association representatives as voting members, as well as a NMFS scientist, two representatives of environmental non-government organizations, a NOAA enforcement representative, and a representative of the Sea Grant Cooperative Extension Service as nonvoting members.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

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

Dated: December 14, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–21623 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121406F]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Grouper Individual Fishing Quota (IFQ) Advisory Panel (AHGIFQAP).

DATES: The AHGIFQAP meeting will convene at 8:30 a.m. on Tuesday, January 9, 2007 and conclude no later than 3 p.m. on Wednesday, January 10, 2007.

ADDRESSES: The meeting will be held at the Quorum Hotel Tampa, 700 North Westshore Boulevard, Tampa, FL 33609; telephone: (813) 289–8200.

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

FOR FURTHER INFORMATION CONTACT: Stu Kennedy, Fishery Biologist, telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council has begun deliberation of a Dedicated Access Privilege System (DAP) for the Commercial grouper fishery. The Council has appointed an AHGIFQAP composed of commercial grouper fishermen and others knowledgeable about DAP systems to assist in the development of such a program. The Panel will discuss the scope and the general configuration of an IFQ program for the Gulf of Mexico commercial grouper fishery.

Although other non-emergency issues not on the agenda may come before the AHGIFQAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the AHGIFQAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

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

Dated: December 14, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–21624 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121406G]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel (AP).

DATES: The Shrimp AP meeting is scheduled to begin at 8:30 a.m. on Wednesday, January 10, 2007.

ADDRESSES: The meeting will be held at the Hilton Houston Hobby Airport, 8181 Airport Blvd., Houston, TX 77061.

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

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Shrimp AP will receive reports from the National Marine Fisheries Service on the status and health of the shrimp stocks as well as a report on the biological and economic aspects of the 2006 Cooperative Shrimp Closure with the state of Texas. The Shrimp AP may make recommendations for a cooperative closure with Texas for 2007. The Shrimp AP will review possible actions for the shrimp fishery as part of Amendment 27 to the Reef Fish Fishery Management Plan (FMP)/Amendment 14 to the Shrimp FMP and additional potential actions to limit access and control effort in the shrimp fishery as part of a potential Amendment 15 to the Shrimp FMP. Joint Reef Fish Amendment 27/Shrimp Amendment 14 proposes actions that deal with adjustments to the total allowable catch (TAC) for red snapper; minimum size limits; bag limits; recreational season dates; and limitations on effort and bycatch for the shrimp fishery. Amendment 15 would potentially reduce effort and bycatch, as well as consider further measures to limit access to the shrimp fishery.

The Shrimp AP consists principally of commercial shrimp fishermen, dealers, and association representatives.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

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

Dated: December 14, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–21625 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121406I]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of closed session Scientific and Statistical Committee (SSC) Selection Committee conference call.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its SSC Selection Committee via conference call to select several (2 or 3) of the Standing SSC members to serve on a select committee. The committee members will monitor the actions of the NMFS design and analysis group and report to the Council.

DATES: The conference call will be held on Friday, January 5, 2007 from 10 a.m. EDT to 10:30 a.m. EDT.

ADDRESSES: The meeting will be held via closed session conference call.

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

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

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council will convene its SSC Selection Committee via conference call to select several (2 or 3) of the Standing SSC members to serve on a select committee. The committee members will monitor the actions of the NMFS design and analysis group and report to the Council in a closed session conference call on Friday, January 5, 2007 10 a.m. EDT. The Committee recommendations will be presented to the Council at the January 22 - 26, 2007 Council meeting in Point Clear, AL.

Special Accommodations

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

Dated: December 14, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–21627 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121406H]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee in January, 2007 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Friday, January 19, 2007, at 9 a.m.

ADDRESSES: This meeting will be held at the Courtyard by Marriott, 32 Exchange Terrace, Providence, RI 02903: telephone: (401) 272–1191; fax: (401) 752–3042.

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

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

SUPPLEMENTARY INFORMATION: The Committee will review and consider final recommendations for Amendment 13 to the Scallop Fishery Management Plan (to re-activate the industry funded observer program). The Committee will also develop initial measures to be considered in Framework 19 to the Scallop Fishery Management Plan (management measures for fishing years 2008 and 2009). The Committee may consider other topics at their discretion.

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

Special Accommodations

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

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

Dated: December 14, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–21626 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121406J]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Anchorage, AK.

DATES: The meeting will be held on January 8–9, 2007, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK.

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

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The SSLMC will discuss the draft Proposal Ranking Tool (PRT), develop procedures for reviewing proposals with the PRT, and sensitivity test the PRT. The SSLMC will also review a draft report on the PRT which will be provided to the NPFMC's SSC at their February 2007 meeting.

Special Accommodations

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

Dated: December 14, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–21622 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121406D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Shoreside Whiting Alternative Group (Ad Hoc Group) will hold a work session via conference call, which is open to the public.

DATES: The Ad Hoc Group will meet via conference call on Tuesday, January 2, 2007, from 1 p.m. until business is completed.

ADDRESSES: Public listening stations will be available at the following locations:

Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280;

National Marine Fisheries Service, (room location to be determined, contact the Council office for further information - see **ADDRESSES**)), 7600 Sand Point Way NE, Seattle, WA 98115, telephone: (206) 526–6150; and

Oregon Department of Fish and Wildlife, Conference Room, 2040 SE Marine Science Dr., Newport, OR 97365, telephone: (541) 867–4741.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Bozzi, Pacific Fishery Management Council, telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to develop an additional analytical alternative in support of the Council's goal to create a regulatory structure that ensures maximum retention of catch and appropriate monitoring for the West Coast shoreside Pacific whiting fishery. This alternative would be a hybrid of alternatives already adopted in November 2006 by the Council for analysis; it will combine elements of the observer-based alternative and the electronic monitoring system-based alternative. The new alternative developed by the Ad Hoc Group is scheduled be considered by the Council at its March 4–9, 2007 meeting in Sacramento, CA.

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

Special Accommodations

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

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

Dated: December 14, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–21621 Filed 12–19–06; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, January 26, 2007.

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.

Catherine D. Daniels,

Assistant Secretary of the Commission.

[FR Doc. 06–9798 Filed 12–18–06; 11:32 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, January 19, 2007.

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.

Catherine D. Daniels,

Assistant Secretary of the Commission.

[FR Doc. 06–9799 Filed 12–18–06; 11:32 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, January 12, 2007.

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.

Catherine D. Daniels,

Assistant Secretary of the Commission.

[FR Doc. 06–9800 Filed 12–18–06; 11:32 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING

Notice of Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, January 5, 2007.

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.

Catherine D. Daniels,

Assistant Secretary of the Commission.

[FR Doc. 06–9801 Filed 12–18–06; 11:32 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the U.S. Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 96,854: DIOLS FORMED BY RING-OPENING OF EPOXIES and any continuations, continuations-in-part, divisionals or re-issues thereof.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Rita C. Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to temporary U.S. Postal Service delays, please fax 202–404–7920, e-mail: *rita.manak@nrl.navy.mil*, or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: December 6, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–21715 Filed 12–19–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Improving Literacy Through School Libraries

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes a priority under the Improving Literacy Through School Libraries Program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2007 and later years. We take this action to allow for the best use of Federal funding to improve school library media centers in low-income communities. We intend for this priority to help strengthen the connection between school libraries and the instructional programs in these schools and districts.

DATES: We must receive your comments on or before January 19, 2007.

ADDRESSES: Address all comments about this proposed priority to Irene Harwarth, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W227, Washington, DC 20202–6200. If you prefer to send your comments through the Internet, use the following address: *lslcomments@ed.gov.* You must include the term ''Comments on FY 2007 LSL Priority'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Irene Harwarth at (202) 401–3751 or Miriam Lund at (202) 401–2871. 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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 3W227, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

General

The purpose of the Improving Literacy Through School Libraries Program is to improve student reading skills and academic achievement by providing students with increased access to up-to-date school library materials; well-equipped, technologically advanced school library media centers; and well-trained, professionally certified school library media specialists. Entities eligible for funding are local educational agencies (LEAs) in which 20 percent of the students served by the LEA are from families with incomes below the poverty line. These entities include public school districts, and may also include charter schools, regional service agencies, and State-administered schools that are considered public school districts by their State educational agency. Grantees use this funding to update their school library media center collections, improve technology and Internet access for their school library media centers, extend the hours of their school library media centers, and provide professional development for school library media specialists.

Background of the Priority

This program has been in existence for four years. Over this four-year period, we have found that the most successful projects are similar in the following two ways: (1) They have provided a comprehensive array of services (such as extended library hours and professional development); and (2) they have had significant support from principals, teachers, and parents.

Based on what we know to be successful practice, we seek to establish a priority that more closely links the proposed project to the school and district through alignment with a school or district improvement plan. We also intend that this priority will encourage applicants to offer a comprehensive array of allowable program services.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Proposed Priority

Under this proposed priority, we would give priority to projects that demonstrate in their grant applications that the proposed literacy project

services are comprehensive and aligned with a school or district improvement plan. A school improvement plan may include the required two-year plan (under section 1116(b)(3) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001) that addresses the academic issues that caused a school to be identified as in need of improvement. The plan could also include a voluntary plan developed by the school or district to improve academic achievement. The applicant must clearly describe the improvement plan that is in place, whether it is for the school or the entire district, the reasons why the plan was put in place, and how the proposed project and the operation of the school library media center will directly support the academic goals established in the improvement plan.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Form (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.*

(Catalog of Federal Domestic Assistance Number 84.364A Improving Literacy Through School Libraries Program)

Program Authority: 20 U.S.C. 6383.

Dated: December 15, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E6–21754 Filed 12–19–06; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Procedural Manual for the Election Assistance Commission's Voting System Testing and Certification Program

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice; publication of Voting System Testing and Certification Manual.

SUMMARY: The U.S. Election Assistance Commission (EAC) is publishing a procedural manual for its Voting System Testing and Certification Program. This program sets the administrative procedures for obtaining an EAC Certification for voting systems. Participation in the program is strictly voluntary. The program is mandated by the Help America Vote Act (HAVA) at 42 U.S.C. 15371.

FOR FURTHER INFORMATION CONTACT: Brian Hancock, Director, Voting System Certification, Washington, DC, (202) 566–3100, Fax: (202) 566–1392.

SUPPLEMENTARY INFORMATION:

Background. HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA (42 U.S.C. 15371) specifically requires the EAC to ''... provide for the testing, certification, decertification and recertification of voting system hardware and software by accredited laboratories.'' To meet this obligation, the EAC has created a voluntary program to test voting systems to Federal voting system standards. The Voting System Testing and Certification Manual, published below, will set the procedures for this program.

In creating the Certification Manual the EAC sought input from experts and stakeholders. Specifically, the EAC conducted meetings with representatives from the voting system test laboratory and voting system manufacturing community. The Commission also held a public hearing in which it received testimony from State election officials, the National Institute of Standards and Technology, academics, electronic voting system experts and public interest groups. Finally, the EAC sought input from the public. A draft version of the EAC Voting System Testing and Certification Program Manual was published with a request for public comment on October 2, 2006. (71 FR 57934). The pubic comment period was open until 5 p.m. e.d.t. on October 31, 2006. While this publication and public comment period were not required under the rulemaking, adjudicative or licensing provisions of the Administrative Procedures Act, all comments received were considered in the drafting of this final administrative manual.

Discussion of Comments. The EAC received over 400 comments from the public. The majority of these comments came from voting system test laboratories, voting system manufacturers, and public interest groups. The EAC also received a number of comments from State and local officials and private individuals.

The majority of comments received by the Commission raised concerns or questioned the meaning or application of various provisions of the manual. These comments were requests for clarification. Another significant block of comments were less specific and focused on the fundamental purpose behind the program or its basic methodology. Comments in this category included individuals who noted that electronic voting machines should not be used in Federal elections and those who disagreed with the program's fundamental structure which utilizes EAC accredited laboratories to test voting systems through direct contracting with the system's manufacturer. Finally, there were a range of specific recommendations on a wide variety of topics. Examples include: (1) Comments from manufacturers and interest groups requesting the EAC to provide specific timeframes or response times for various program elements or activities; (2) recommendations that the EAC Mark of,

Certification requirements be abolished or that the mark not be ''permanently'' affixed to voting machines to allow for its removal in the event of a voting system upgrade or decertification; (3) recommendations from test laboratories and public interest groups that the EAC clarify the role of its Voting System Test Labortories, emphasizing that test plans, test reports and other information submitted under this program be submitted directly and independently by the test labs; (4) Comments from test laboratories recommending that the program provide a means for dealing with *de minimis* hardware changes; (5) recommendations from interest groups that the EAC utilize a third party group of technical advisors for all of its determinations under the program; (6) recommendations from interest groups urging the commission to make Certification Program documents available to the public; and (7) recommendations from State officials that the EAC contact and work with the Chief State Election Official when reviewing fielded voting systems, providing emergency modification waivers or reviewing anomaly reports.

The EAC reviewed and considered each of the comments presented. In doing so, it also gathered additional information and performed research regarding the suggestions. The EAC's commitment to public participation is evident in the final version of the Certification Manual. The Manual has been enhanced in a number of areas in response to conscientious public comment. A total of six pages have been added to the Manual. Throughout the entire Manual the EAC added or amended language to clarify its procedures consistent with the comments it received. For example, to further clarify terminology used throughout the Manual almost a dozen terms were newly defined or ''Significantly clarified in the definition section of Chapter 1. Additionally, the EAC made changes to clarify the independent role of Voting System Test Labs in the program, require the EAC to publish its average response timeframes, and increase its coordination on State Election Officials. Examples of larger changes made in the document include an added section to Chapter 3 of the Manual, providing procedures for de minimis changes. This was put in place to deal with the numerous engineering change orders the Commission expects will be submitted to test laboratories under the program. Similarly, the EAC re-titled and re-wrote a major portion of Chapter 10 of the Mannal (Release of Certification Program Information) to more clearly and affirmatively state EAC's policy on the release of Certification Program information.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–M

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Voting System Testing & Certification Program Manual

Version 1.0 - Effective January 1, 2007 *www.eac.gov*

OMB Control Number 3265-0004

BILLING CODE 6820–KF–C

The reporting requirements in this manual have been approved under the Paperwork Reduction Act of 1995, Office of Management and Budget Control (OMB) Number 3265–0004, expiring March 31, 2007. Persons are not required to respond to this collection of information unless it displays a currently valid OMB number. Information gathered pursuant to this document and its forms will be used solely to administer the EAC Testing and Certification Program. This program is voluntary. Individuals who wish to participate in the program, however, must meet its requirements. The estimated total annual hourly burden on the voting system manufacturing industry and election officials is 114 hours. This estimate includes the time required for reviewing the instructions, gathering information, and completing the prescribed forms. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Election Assistance Commission, Voting System Testing and Certification Program, Office of the Program Director, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

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Introduction

1.1. Background. The Federal Election Commission (FEC) adopted the first formal set of voluntary Federal standards for computer-based voting systems in January 1990. At that time, no national program or organization existed to test and certify such systems to the standards. The National Association of State Election Directors (NASED) stepped up to fill this void in 1994. NASED is an independent, nongovernmental organization of State election officials. The organization formed the Nation's first national program to test and qualify voting systems to the new Federal standards. The organization worked for more than a decade, on a strictly voluntary basis, to help ensure the reliability, consistency, and accuracy of voting systems fielded in the United States. In late 2002, Congress passed the Help America Vote Act of 2002 (HAVA). HAVA created the U.S. Election Assistance Commission (EAC) and assigned to the EAC the responsibility for both setting voting system standards and providing for the testing and certification of voting systems. This mandate represented the first time the Federal government provided for the voluntary testing, certification, and decertification of voting systems nationwide. In response to this HAVA requirement, the EAC has developed the Voting System Testing and Certification Program (Certification Program).

1.2. Authority. HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to ''* * * provide for the testing, certification, decertification and recertification of voting system hardware and software by accredited laboratories.'' The EAC has the sole authority to grant certification or withdraw certification at the Federal level, including the authority to grant, maintain, extend, suspend, and withdraw the right to retain or use any certificates, marks, or other indicators of certification.

1.3. Scope. This Manual provides the procedural requirements of the EAC Voting System Testing and Certification Program. Although participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for participants. The procedural requirements of this Manual supersede any prior voting system certification requirements issued by the EAC.

1.4. Purpose. The primary purpose of the EAC Certification Program Manual is to provide clear procedures to Manufacturers for the testing and certification of voting systems to specified Federal standards consistent with the requirements of HAVA Section 231(a)(1). The program, however, also serves to do the following:

1.4.1. Support State certification programs.

1.4.2. Support local election officials in the areas of acceptance testing and pre-election system verification.

1.4.3. Increase quality control in voting system manufacturing.

1.4.4. Increase voter confidence in the use of voting systems.

1.5. Manual. This Manual is a comprehensive presentation of the EAC Voting System Testing and Certification Program. It is intended to establish all of the program's administrative requirements.

1.5.1. *Contents.* The contents of the Manual serve as an overview of the program itself. The Manual contains the following chapters:

1.5.1.1. *Manufacturer Registration.* Under the program, a Manufacturer is required to register with the EAC prior to participation. This registration provides the EAC with needed information and requires the Manufacturer to agree to the requirements of the Certification Program. This chapter sets out the requirements and procedures for registration.

1.5.1.2. *When Voting Systems Must Be Submitted for Testing and Certification.* All voting systems must be submitted consistent with this Manual before they may receive a certification from the EAC. This chapter discusses the various circumstances that require submission to obtain or maintain a certification.

1.5.1.3. *Certification Testing and Review.* Under this program, the testing and review process requires the completion of an application, employment of an EAC-accredited laboratory for system testing, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification. This chapter discusses the required steps for voting system testing and review.

1.5.1.4. *Grant of Certification.* If an Initial Decision to grant certification is made, the Manufacturer must take additional steps before the Manufacturer may be issued a certification. These steps require the Manufacturer to document the performance of a trusted build (see definition at Section 1.16), the deposit of software into a repository, and the creation of system identification tools. This chapter outlines the action that a Manufacturer must take to receive a certification and the Manufacturer's post-certification responsibilities.

1.5.1.5. *Denial of Certification.* If an Initial Decision to deny certification is made, the Manufacturer has certain rights and responsibilities under the program. This chapter contains procedures for requesting reconsideration, opportunity to cure defects, and appeal.

1.5.1.6. *Decertification.* Decertification is the process by which the EAC revokes a certification it previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. This chapter sets procedures for Decertification and explains the Manufacturer's rights and responsibilities during that process.

1.5.1.7. Quality Monitoring Program. Under the Certification Program, EAC will implement a quality monitoring process that will help ensure that voting systems certified by the EAC are the same systems sold by Manufacturers. The quality monitoring process is a mandatory part of the program and includes elements such as fielded voting system review, anomaly reporting, and manufacturing site visits. This chapter sets forth the requirements of the Quality Monitoring Program.

1.5.1.8. Requests for Interpretations. An Interpretation is a means by which a registered Manufacturer or Voting System Test Laboratory (VSTL) may seek. clarification on a specific Voluntary Voting System Guidelines (VVSG) standard. This chapter outlines the policy, requirements, and procedures for requesting an Interpretation.

1.5.1.9. Release of Certification Program Information. Federal law protects certain types of information individuals provided the government from release. This chapter outlines the program's policies, sets procedures, and discusses responsibilities associated with the public release of potential protected commercial information.

1.5.2. *Maintenance and Revision.* This Manual, which sets the procedural

requirements for a new Federal program, is expected to be improved and expanded as experience and circumstances dictate. The Manual will be reviewed periodically and updated to meet the needs of the EAC, Manufacturers, VSTLs, election officials, and public policy. The EAC is responsible for revising this document. All revisions will be made consistent with Federal law. Substantive input from stakeholders and the public will be sought whenever possible, at the discretion of the agency. Changes in policy requiring immediate implementation will be noticed via policy memoranda and will be issued to each registered Manufacturer. Changes, addendums, or updated versions will also be posted to the EAC Web site at *http://www.eac.gov*.

1.6. Program Methodology. EAC's Voting System Testing and Certification Program is but one part of the overall conformity assessment process that includes companion efforts at the State and local levels.

1.6.1. *Federal and State Roles.* The process to ensure that voting equipment meets the technical requirements is a distributed, cooperative effort of Federal, State, and local officials in the United States. Working with voting equipment Manufacturers, these officials each have unique responsibility for ensuring that the equipment a voter uses on Election Day meets specific requirements.

1.6.1.1. The EAC Program has primary responsibility for ensuring that voting systems submitted under this program meet Federal standards established for voting systems.

1.6.1.2. State officials have responsibility for testing voting systems to ensure that they will support the specific requirements of each individual State. States may use EAC VSTLs to perform testing of voting systems to unique State requirements while the systems are being tested to Federal standards. The EAC will not, however, certify voting systems to State requirements.

1.6.1.3. State or local officials are responsible for making the final purchase choice. They are responsible for deciding which system offers the best fit and total value for their specific State or local jurisdiction.

1.6.1.4. State or local officials are also responsible for acceptance testing to ensure that the equipment delivered is identical to the equipment certified on the Federal and State levels, is fully operational, and meets the contractual requirements of the purchase.

1.6.1.5. State or local officials should perform pre-election logic and accuracy testing to confirm that equipment is operating properly and is unmodified from its certified state.

1.6.2. *Conformity Assessment Generally.* Conformity assessment is a system established to ensure that a product or service meets the requirements that apply to it. Many conformity assessment systems exist to protect the quality and ensure compliance with requirements of products and services. All conformity assessment systems attempt to answer a variety of questions:

1.6.2.1. What specifications are required of an acceptable system? For voting systems, the EAC voting system standards (VVSG and Voting System Standards [VSS]) address this issue. States and local jurisdictions also have supplementing standards.

1.6.2.2. How are systems tested against required specifications? The EAC Voting System Testing and Certification Program is a central element of the larger conformity assessment system. The program, as set forth in this Manual, provides for the testing and certification of voting systems to identified versions of the VVSG. The Testing and Certification Program's purpose is to ensure that State and local jurisdictions receive voting systems that meet the requirements of the VVSG.

1.6.2.3. Are the testing authorities qualified to make an accurate evaluation? The EAC accredits VSTLs, after the National Institute of Standards and Technology (NIST) National Voluntary Lab Accreditation Program (NVLAP) has reviewed their technical competence and lab practices, to ensure these test authorities are fully qualified. Furthermore, EAC technical experts review all test reports from accredited laboratories to ensure an accurate and complete evaluation. Many States provide similar reviews of laboratory reports.

1.6.2.4. Will Manufacturers deliver units within manufacturing tolerances to those tested? The VVSG and this Manual require that vendors have appropriate change management and quality control processes to control the quality and configuration of their products. The Certification Program provides mechanisms for the EAC to verify Manufacturer quality processes through field system testing and manufacturing site visits. States have implemented policies for acceptance of delivered units.

1.7. Program Personnel. All EAC personnel and contractors associated with this program will be held to the highest ethical standards. All agents of the EAC involved in the Certification Program will be subject to conflict-of-interest reporting and review, consistent with Federal law and regulation.

1.8. Program Records. The EAC Program Director is responsible for maintaining accurate records to demonstrate that the testing and certification program procedures have been effectively fulfilled and to ensure the traceability, repeatability, and reproducibility of testing and test report review. All records will be maintained, managed, secured, stored, archived, and disposed of in accordance with Federal law, Federal regulations, and procedures of the EAC.

1.9. Submission of Documents. Any documents submitted pursuant to the requirements of this Manual shall be submitted:

1.9.1. If sent electronically, via secure e-mail or physical delivery of a compact disk, unless otherwise specified.

1.9.2. In a Microsoft Word or Adobe PDF file, formatted to protect the document from alteration.

1.9.3. With a proper signature when required by this Manual. Documents that require an authorized signature may be signed with an electronic representation or image of the signature of an authorized management representative and must meet any and all subsequent requirements established by the Program Director regarding security.

1.9.4. If sent via physical delivery, by Certified Mail™ (or similar means that allows tracking) to the following address: Testing and Certification Program Director, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

1.10. Receipt of Documents—Manufacturer. For purposes of this Manual, a document, notice, or other communication is considered received by a Manufacturer upon one of the following:

1.10.1. The actual, documented date the correspondence was received (either electronically or physically) at the Manufacturer's place of business, or

1.10.2. If no documentation of the actual delivery date exists, the date of constructive receipt of the communication. For electronic correspondence, documents will be constructively received the day after the date sent. For mail correspondence, the document will be constructively received 3 days after the date sent.

1.10.3. The term ''receipt'' shall mean the date a document or correspondence arrives (either electronically or physically) at the Manufacturer's place of business. Arrival does not require that an agent of the Manufacturer open, read, or review the correspondence.

1.11. Receipt of Documents—EAC. For purposes of this Manual, a document, notice, or other communication is considered received by the EAC upon its physical or electronic arrival at the agency. All documents received by the agency will be physically or electronically date stamped. This stamp shall serve as the date of receipt. Documents received after the regular business day (5 p.m. Eastern Standard Time), will be treated as if received on the next business day.

1.12. EAC Response Timeframes. In recognition of the responsibilities and challenges facing Manufacturers as they work to meet the requirements imposed by this program, State certification programs, customers, State law and production schedules, the EAC will provide timeframes for its response to significant program elements. This shall be done by providing current metrics on EAC's Web site regarding the actual average EAC response time for (1) approving Test Plans, (2) issuing Initial Decisions, and (3) issuing Certificates of Conformance.

1.13. Records Retention—Manufacturers. The Manufacturer is responsible for ensuring that all documents submitted to the EAC or that otherwise serve as the basis for the certification of a voting system are retained. A copy of all such records shall be retained as long as a voting system is offered for sale or supported by a Manufacturer and for 5 years thereafter.

1.14. Record Retention—EAC. The EAC shall retain all records associated with the certification of a voting system as long as such system is fielded in a State or local election jurisdiction for use in Federal elections. The records shall otherwise be retained or disposed of consistent with Federal statutes and regulations.

1.15. Publication and Release of Documents. The EAC will release documents

consistent with the requirements of Federal law. It is EAC policy to make the certification process as open and public as possible. Any documents (or portions thereof) submitted under this program will be made available to the public unless specifically protected from release by law. The primary means for making this information available is through the EAC Web site.

1.16. Definitions. For purposes of this Manual, the terms listed below have the following definitions.

Appeal. A formal process by which the EAC is petitioned to reconsider an Agency Decision.

Appeal Authority. The individual or individuals appointed to serve as the determination authority on appeal.

Build Environment. The disk or other media that holds the source code, compiler, linker, integrated development environments (IDE), and/or other necessary files for the compilation and on which the compiler will store the resulting executable code.

Certificate of Conformance. The certificate issued by the EAC when a system has been found to meet the requirements of the VVSG. The document conveys certification of a system.

Commission. The U.S. Election Assistance Commission, as an agency.

Commissioners. The serving commissioners of the U.S. Election Assistance Commission.

Component. A discrete and identifiable element of hardware or software within a larger voting system.

Compiler. A computer program that translates programs expressed in a high-level language into machine language equivalents.

Days. Calendar days, unless otherwise noted. When counting days, for the purpose of submitting or receiving a document, the count shall begin on the first full calendar day after the date the document was received.

Disk Image. An exact copy of the entire contents of a computer disk.

Election Official. A State or local government employee who has as one of his or her primary duties the management or administration of a Federal election.

Federal Election. Any primary, general, runoff, or special Election in which a candidate for Federal office (President, Senator, or Representative) appears on the ballot.

Fielded Voting System. A voting system purchased or leased by a State or local government that is being used in a Federal election.

File Signature. A signature of a file or set of files produced using a HASH algorithm. A file signature, sometimes called a HASH value, creates a value that is computationally infeasible of being produced by two similar but different files. File signatures are used to verify that files are unmodified from their original versions.

HASH Algorithm. An algorithm that maps a bit string of arbitrary length to a shorter, fixed-length bit string. (A HASH uniquely identifies a file similar to the way a fingerprint identifies an individual. Likewise, as an individual cannot be recreated from his or her fingerprint, a file cannot be recreated from a HASH. The HASH algorithm used primarily in the NIST (National Software Reference Library), and this program is the Secure HASH Algorithm (SHA–1) specified in Federal Information Processing Standard (FIPS) 180–1.)

Installation Device. A device containing program files, software, and installation instructions for installing an application (program) onto a computer. Examples of such devices include installation disks, flash memory cards, and PCMCIA cards.

Integration Testing. The end-to-end testing of a full system configured for use in an election to assure that all legitimate configurations meet applicable standards.

Linker. A computer program that takes one or more objects generated by compilers and assembles them into a single executable program.

Manufacturer. The entity with ownership and control over a voting system submitted for certification.

Mark of Conformance. A uniform notice permanently posted on a voting system that signifies that it has been certified by the EAC.

Memorandum for the Record. A written statement drafted to document an event or finding, without a specific addressee other than the pertinent file.

Proprietary Information. Commercial information or trade secrets protected from release under the Freedom of Information Act (FOIA) and the Trade Secrets Act.

System Identification Tools. Tools created by a Manufacturer of voting systems that allow elections officials to verify that the hardware and software of systems purchased are identical to the systems certified by the EAC.

Technical Reviewers. Technical experts in the areas of voting system technology and conformity assessment appointed by the EAC to provide expert guidance.

Testing and Certification Decision Authority. The EAC Executive Director or Acting Executive Director.

Testing and Certification Program Director. The individual appointed by the EAC Executive Director to administer and manage the Testing and Certification Program.

Trusted Build. A witnessed software build where source code is converted to machine-readable binary instructions (executable code) in a manner providing security measures that help ensure that the executable code is a verifiable and faithful representation of the source code.

Voting System. The total combination of mechanical, electromechanical, and electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used to define ballots, cast and count votes, report or display election results, connect the voting system to the voter registration system, and maintain and produce any audit trail information.

Voting System Standards. Voluntary voting system standards developed by the FEC. Voting System Standards have been published twice: once in 1990 and again in 2002. The Help America Vote Act made the 2002 Voting System Standards EAC guidance. All new voting system standards are issued by the EAC as Voluntary Voting System Guidelines.

Voting System Test Laboratories. Laboratories accredited by the EAC to test voting systems to EAC approved voting system standards. Each Voting System Test Laboratory (VSTL) must be accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) and recommended by the National Institute of Standards Technology (NIST) before it may receive an EAC accreditation. NVLAP provides third party accreditation to testing and calibration laboratories. NVLAP is in full conformance with the standards of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), including ISO/IEC Guide 17025 and 17011.

Voluntary Voting System Guidelines. Voluntary voting system standards developed, adopted, and published by the EAC. The guidelines are identified by version number and date.

1.17. Acronyms and Abbreviations. For purposes of this Manual, the acronyms and abbreviations listed below represent the following terms.

Certification Program. The EAC Voting System Testing and Certification Program
Decision Authority. Testing and Certification Decision Authority
EAC. United States Election Assistance Commission
FEC. Federal Election Commission
HAVA. Help America Vote Act of 2002 (42 U.S.C. 15301 *et seq.*)
Labs or Laboratories. Voting System Test Laboratories
NASED. National Association of State Election Directors
NIST. National Institute of Standards and Technology
NVLAP. National Voluntary Laboratory Accreditation Program
Program Director. Director of the EAC Testing and Certification Program
VSS. Voting System Standards
VSTL. Voting System Test Laboratory
VVSG. Voluntary Voting System Guidelines

2. Manufacturer Registration

2.1. Overview. Manufacturer Registration is the process by which voting system Manufacturers make initial contact with the EAC and provide information essential to participate in the EAC Voting System Testing and Certification Program. Before a Manufacturer of a voting system can submit an application to have a voting system certified by the EAC, the Manufacturer must be registered. This process requires the Manufacturer to provide certain contact information and agree to certain requirements of the Certification Program. After successfully registering, the Manufacturer will receive an identification code.

2.2. Registration Required. To submit a voting system for certification or otherwise participate in the EAC voluntary Voting System Testing and Certification Program, a Manufacturer must register with the EAC. Registration does not constitute an EAC endorsement of the Manufacturer or its products. Registration of a Manufacturer is not a certification of that Manufacturer's products.

2.3. Registration Requirements. The registration process will require the voting system Manufacturer to provide certain information to the EAC. This information is necessary to enable the EAC to administer the Certification Program and communicate effectively with the Manufacturer. The registration process also requires the Manufacturer to agree to certain Certification Program requirements. These requirements relate to the Manufacturer's duties and responsibilities under the program. For this program to succeed, it is vital that a Manufacturer know and assent to these duties at the outset of the program.

2.3.1. *Information.* Manufacturers are required to provide the following information.

2.3.1.1. The Manufacturer's organizational information:

2.3.1.1.1. The official name of the Manufacturer.

2.3.1.1.2. The address of the Manufacturer's official place of business.

2.3.1.1.3. A description of how the Manufacturer is organized (*i.e.*, type of corporation or partnership).

2.3.1.1.4. Names of officers and/or members of the board of directors.

2.3.1.1.5. Names of all partners and members (if organized as a partnership or limited liability corporation).

2.3.1.1.6. Identification of any individual, organization, or entity with a controlling ownership interest in the Manufacturer.

2.3.1.2. The identity of an individual authorized to represent and make binding commitments and management determinations for the Manufacturer (management representative). The following information is required for the management representative:

2.3.1.2.1. Name and title.

2.3.1.2.2. Mailing and physical addresses.

2.3.1.2.3. Telephone number, fax number, and e-mail address.

2.3.1.3. The identity of an individual authorized to provide technical information on behalf of the Manufacturer (technical representative). The following information is required for the technical representative:

2.3.1.3.1. Name and title.

2.3.1.3.2. Mailing and physical addresses.

2.3.1.3.3. Telephone number, fax number, and e-mail address.

2.3.1.4. The Manufacturer's written policies regarding its quality assurance system. This policy must be consistent with guidance provided in the VVSG and this Manual.

2.3.1.5. The Manufacturer's written polices regarding internal procedures for controlling and managing changes to and versions of its voting systems. Such polices shall be consistent with this Manual and guidance provided in the VVSG.

2.3.1.6. The Manufacturer's written polices on document retention. Such policies must be consistent with the requirements of this Manual.

2.3.1.7. A list of all manufacturing and/or assembly facilities used by the Manufacturer and the name and contact information of a person at each facility. The following information is required for a person at each facility:

2.3.1.7.1. Name and title.

2.3.1.7.2. Mailing and physical addresses.

2.3.1.7.3. Telephone number, fax number, and e-mail address.

2.3.2. *Agreements.* Manufacturers are required to take or abstain from certain actions to protect the integrity of the Certification Program and promote quality assurance. Manufacturers are required to agree to the following program requirements:

2.3.2.1. Represent a voting system as certified only when it is authorized by the EAC and is consistent with the procedures and requirements of this Manual.

2.3.2.2. Produce and affix an EAC certification label to all production units of the certified system. Such labels must meet the requirements set forth in Chapter 5 of this Manual.

2.3.2.3. Notify the EAC of changes to any system previously certified by the EAC pursuant to the requirements of this Manual (see Chapter 3). Such systems shall be submitted for testing and additional certification when required.

2.3.2.4. Permit an EAC representative to verify the Manufacturer's quality control procedures by cooperating with EAC efforts to test and review fielded voting systems consistent with Section 8.6 of this Manual.

2.3.2.5. Permit an EAC representative to verify the Manufacturer's quality control procedures by conducting periodic inspections of manufacturing facilities consistent with Chapter 8 of this Manual.

2.3.2.6. Cooperate with any EAC inquiries and investigations into a certified system's compliance with VVSG standards or the procedural requirements of this Manual consistent with Chapter 7.

2.3.2.7. Report to the Program Director any known malfunction of a voting system holding an EAC Certification. A malfunction is a failure of a voting system, not caused solely by operator or administrative error, which causes the system to cease operation during a Federal election or otherwise results in data loss. Malfunction notifications should be consolidated into one report. This report should identify the location, nature, date, impact, and resolution (if any) of the malfunction and be filed within 60 days of any Federal election.

2.3.2.8. Certify that the entity is not barred or otherwise prohibited by statute, regulation, or ruling from doing business in the United States.

2.3.2.9. Adhere to all procedural requirements of this Manual.

2.4. Registration Process. Generally, registration is accomplished through use of an EAC registration form. After the EAC has received a registration form and other required registration documents, the agency reviews the information for completeness before approval.

2.4.1. *Application Process.* To become a registered voting system Manufacturer, one must apply by submitting a Manufacturer Registration Application Form (Appendix A). This form will be used as the means for the Manufacturer to provide the information and agree to the responsibilities required in Section 2.3, above.

2.4.1.1. Application Form. In order for the EAC to accept and process the registration form, the applicant must adhere to the following requirements:

2.4.1.1.1. All fields must be completed by the Manufacturer.

2.4.1.1.2. All required attachments prescribed by the form and this Manual must be identified, completed, and forwarded in a timely manner to the EAC (e.g., Manufacturer's quality control and system change policies).

2.4.1.1.3. The application form must be affixed with the handwritten signature (including a digital representation of the handwritten signature) of the authorized representative of the vendor.

2.4.1.2. Availability and Use of the Form. The Manufacturer Registration Application Form may be accessed through the EAC Web site at *http://www.eac.gov.* Instructions for completing and submitting the form are included on the Web site. The Web site will also provide contact information regarding questions about the form or the application process.

2.4.2. *EAC Review Process.* The EAC will review all registration applications.

2.4.2.1. After the application form and required attachments have been submitted, the applicant will receive an acknowledgment that the EAC has received the submission and that the application will be processed.

2.4.2.2. If an incomplete form is submitted or an attachment is not provided, the EAC will notify the Manufacturer and request the information. Registration applications will not be processed until they are complete.

2.4.2.3. Upon receipt of the completed registration form and accompanying documentation, the EAC will review the information for sufficiency. If the EAC requires clarification or additional information, the EAC will contact the Manufacturer and request the needed information.

2.4.2.4. Upon satisfactory completion of a registration application's sufficiency review, the EAC will notify the Manufacturer that it has been registered.

2.5. Registered Manufacturers. After a Manufacturer has received notice that it is registered, it will receive an identification code and will be eligible to participate in the voluntary voting system Certification Program.

2.5.1. *Manufacturer Code.* Registered Manufacturers will be issued a unique, three-letter identification code. This code will be used to identify the Manufacturer and its products.

2.5.2. *Continuing Responsibility To Report.* Registered Manufacturers are required to keep all registration information up to date. Manufacturers must submit a revised application form to the EAC within 30 days of any changes to the information required on the application form. Manufacturers will remain registered participants in the program during this update process.

2.5.3. *Program Information Updates.* Registered Manufacturers will be automatically provided timely information relevant to the Certification Program.

2.5.4. *Web site Postings.* The EAC will add the Manufacturer to the EAC listing of registered voting system Manufacturers publicly available at *http://www.eac.gov.*

2.6. Suspension of Registration. Manufacturers are required to establish policies and operate within the EAC Certification Program consistent with the procedural requirements presented in this Manual. When Manufacturers engage in management activities that are inconsistent with this Manual or fail to cooperate with the EAC in violation the Certification Program's requirements, their registration may be suspended until such time as the problem is remedied.

2.6.1. *Procedures.* When a Manufacturer's activities violate the procedural requirements of this Manual, the Manufacturer will be notified of the violations, given an opportunity to respond, and provided the steps required to bring itself into compliance.

2.6.1.1. Notice. Manufacturers shall be provided written notice that they have taken action inconsistent with or acted in violation of the requirements of this Manual. The notice will state the violations and the specific steps required to cure them. The notice will also provide Manufacturers with 30 days (or a greater period of time as stated by the Program Director) to (1) respond to the notice and/or (2) cure the defect.

2.6.1.2. Manufacturer Action. The Manufacturer is required to either respond in a timely manner to the notice (demonstrating that it was not in violation of program requirements) or cure the violations identified in a timely manner. In any case, the Manufacturer's action must be approved by the Program Director to prevent suspension.

2.6.1.3. Non-Compliance. If the Manufacturer fails to respond in a timely manner, is unable to provide a cure or response that is acceptable to the Program Director, or otherwise refuses to cooperate, the Program Director may suspend the Manufacturer's registration. The Program Director shall issue a notice of his or her intent to suspend the registration and provide the Manufacturer five (5) business days to object to the action and submit information in support of the objection.

2.6.1.4. Suspension. After notice and opportunity to be heard (consistent with the above), the Program Director may suspend a Manufacturer's registration. The suspension shall be noticed in writing. The notice must inform the Manufacturer of the steps that can be taken to remedy the violations and lift the suspension.

2.6.2. *Effect of Suspension.* A suspended Manufacturer may not submit a voting system for certification under this program. This prohibition includes a ban on the submission of modifications and changes to certified system. A suspension shall remain in effect until lifted. Suspended Manufacturers will have their registration status reflected on the EAC Web site. Manufacturers have the right to remedy a non-compliance issue at any time and lift a suspension consistent with EAC guidance. Failure of a Manufacturer to follow the requirements of this section may also result in Decertification of voting systems consistent with Chapter 7 of this Manual.

3. When Voting Systems Must Be Submitted for Testing and Certification

3.1. Overview. An EAC certification signifies that a voting system has been successfully tested to identified voting system standards adopted by the EAC. Only the EAC can issue a Federal certification. Ultimately, systems must be submitted for testing and certification under this program to receive this certification. Systems will usually be submitted when (1) they are new to the marketplace, (2) they have never before received an EAC certification, (3) they are modified, or (4) the Manufacturer wishes to test a previously certified system to a different (newer) standard. This chapter also discusses the submission of *de minimis* changes, which may not require additional testing and certification, as well as provisional, pre-election emergency modifications, which provide for pre-election, emergency waivers.

3.2. What Is an EAC Certification? Certification is the process by which the EAC, through testing and evaluation conducted by an accredited Voting System Test Laboratory, validates that a voting system meets the requirements set forth in existing voting system testing standards (Voting System Standards [VSS] or VVSG), and performs according to the Manufacturers specifications for the system. An EAC certification may be issued only by the EAC in accordance with the procedures presented in this Manual. Certifications issued by other bodies (e.g., the National Association of State Election Directors and State certification programs) are not EAC certifications.

3.2.1. *Type of Voting Systems Certified.* The EAC Certification Program is designed to test and certify electromechanical and electronic voting systems. The EAC will not accept for certification review voting systems that do not contain any electronic components. Ultimately, the determination of whether a voting system may be submitted for testing and certification under this program is solely at the discretion of the EAC.

3.2.2. *Voting System Standards.* Voting systems certified under this program are tested to a set of voluntary standards providing requirements that voting systems must meet to receive a Federal certification. Currently, these standards are referred to as Voluntary Voting System Guidelines (in the past they were called Voting System Standards).

3.2.2.1. Versions—Availability and Identification. Voluntary Voting System Guidelines (or applicable Voting System Standards) are published by the EAC and are available on the EAC Web site (*http://www.eac.gov*). The standards will be routinely updated. Versions will be identified by version number and/or release date.

3.2.2.2. Versions—Basis for Certification. The EAC will promulgate which version or versions of the standards it will accept as the basis for testing and certification.

This effort may be accomplished through the setting of an implementation date for a particular version's applicability, the setting of a date by which testing to a particular version is mandatory, or the setting of a date by which the EAC will no longer test to a particular standard. The EAC will certify only those voting systems tested to standards that the EAC has identified as valid for certification.

3.2.2.2.1. End date. When a version's status as the basis of an EAC certification is set to expire on a certain date, the submission of the system's test report will be the controlling event (see Chapter 4). This requirement means the system's test report must be received by the EAC on or before the end date to be certified to the terminating standard.

3.2.2.2.2. Start date. When a version's status as the basis of an EAC certification is set to begin on a certain date, the submission of the system's application for certification will be the controlling event (see Chapter 4). This requirement means the system's application, requesting certification to the new standard, will not be accepted by the EAC until the start date.

3.2.2.3. Version—Manufacturer's Option. When the EAC has authorized certification to more than one version of the standards, the Manufacturer must choose which version it wishes to have its voting system tested against. The voting system will then be certified to that version of the standards. Manufacturers must ensure that all applications for certification identify a particular version of the standards.

3.2.2.4. Emerging Technologies. If a voting system or component thereof is eligible for a certification under this program (see Section 3.2.1.) and employs technology that is not addressed by a currently accepted version of the VVSG or VSS, the relevant technology shall be subjected to full integration testing and shall be tested to ensure that it operates to the Manufacturer's specifications. The remainder of the system will be tested to the applicable Federal standards. Information on emerging technologies will be forwarded to the EAC's Technical Guidelines Development Committee (TGDC).

3.2.3. *Significance of an EAC Certification.* An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting standards. An EAC certification is not any of the following:

3.2.3.1. An endorsement of a Manufacturer, voting system, or any of the system's components.

3.2.3.2. A Federal warranty of the voting system or any of its components.

3.2.3.3. A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.

3.2.3.4. A substitute for State or local certification and testing.

3.2.3.5. A determination that the system is ready for use in an election.

3.2.3.6. A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

3.3. Effect of the EAC Certification Program on Other National Certifications. Before the creation of the EAC Certification Program, national voting system qualification was conducted by a private membership organization, the National Association of

State Election Directors (NASED). NASED offered a qualification for voting systems for more than a decade, using standards issued by the Federal government. The EAC Certification Program does not repeal NASED-issued qualifications. All voting systems previously qualified under the NASED program retain their NASED qualification consistent with State law; however, a NASED-qualified voting system is *not* an EAC-certified system and is treated like an uncertified system for purposes of the EAC Certification Program.

3.4. When Certification Is Required Under the Program. To obtain or maintain an EAC certification, Manufacturers must submit a voting system for testing and certification under this program. Such action is usually required for (1) new systems not previously tested to any standard; (2) existing systems not previously certified by the EAC; (3) previously certified systems that have been modified; (4) systems or technology specifically identified for retesting by the EAC; or (5) previously certified systems that the Manufacturer seeks to upgrade to a higher standard (e.g., a more recent version of the VVSG).

3.4.1. *New System Certification.* For purposes of this Manual, new systems are defined as voting systems that have not been previously tested to applicable Federal standards. New voting systems must be fully tested and submitted to the EAC according to the requirements of Chapter 4 of this Manual.

3.4.2. *System Not Previously EAC Certified.* This term describes any voting system not previously certified by the EAC, including systems previously tested and qualified by NASED or systems previously tested and denied certification by the EAC. Such systems must be fully tested and submitted to the EAC according to the requirements of Chapter 4 of this Manual.

3.4.3. *Modification.* A modification is any change to a previously EAC-certified voting system's hardware, software, or firmware that is not a *de minimis* change. Any modification to a voting system will require testing and review by the EAC according to the requirements of Chapter 4 of this Manual.

3.4.4. *EAC Identified Systems.* Manufacturers may be required to submit systems previously certified by the EAC for retesting. This may occur when the EAC determines that the original tests conducted on the voting system are now insufficient to demonstrate compliance with Federal standards in light of newly discovered threats or information.

3.4.5. *Certification Upgrade.* This term defines any system previously certified by the EAC but submitted for additional testing and certification to a higher standard (e.g., to a newer version of the VVSG). Any such system must be tested to the new standards and submitted to the EAC per Chapter 4 of this Manual.

3.5. De Minimis Changes. A de minimis change is a change to voting system hardware that is so minor in nature and effect that it requires no additional testing and certification. Such changes, however, require VSTL review and endorsement as well as EAC approval. Any proposed change not accepted as a de minimis change is a modification and shall be submitted for testing and review consistent with the requirements of this Manual. An approved *de minimis* change is not a modification.

3.5.1. *De Minimis Change—Defined.* A de minimis change is a change to a certified voting system's hardware, the nature of which will not materially alter the system's reliability, functionality, capability, or operation. Software and firmware modifications are not de minimis changes. In order for a hardware change to qualify as a de minimis change, it must not only maintain, unaltered, the reliability, functionality, capability and operability of a system, it shall also ensure that when hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. Under no circumstance shall a change be considered a de minimis change if it has reasonable and identifiable potential to impact the system's operation and compliance with applicable voting system standards.

3.5.2. *De Minimis Change—Procedure.* Manufacturers who wish to implement a proposed de minimis change must submit it for VSTL review and endorsement and EAC approval. A proposed change is not a de minimis change and may not be implemented as such until it has been approved in writing by the EAC.

3.5.2.1. *VSTL Review.* Manufacturers must submit any proposed *de minimis* change to an EAC VSTL for review and endorsement. The Manufacturer will provide the VSTL (1) a detailed description of the change; (2) a description of the facts giving rise to or necessitating the change; (3) the basis for its determination that the change will not alter the system's reliability, functionality, or operation; and (4) upon request of the VSTL, a sample voting system at issue or any relevant technical information needed to make the determination. The VSTL will review the proposed de minimis change and make an independent determination as to whether the change meets the definition of de minimis change or requires the voting system to go through additional testing as a system modification. If the VSTL determines that a de minimis change is appropriate, it shall endorse the proposed change as a de minimis change. If the VSTL determines that modification testing and certification should be performed, it shall reject the proposed change. Endorsed changes shall be forwarded to the EAC Program Director for final approval. Rejected changes shall be returned to the Manufacturer for resubmission as system modifications.

3.5.2.2. *VSTL Endorsed Changes.* The VSTL shall forward to the EAC any change it has endorsed as de minimis. The VSTL shall forward its endorsement in a package that includes:

3.5.2.2.1. The Manufacturer's initial description of the *de minimis* change, a narrative of facts giving rise to or necessitating the change, and the determination that the change will not alter the system's reliability, functionality, or operation.

3.5.2.2.2. The written determination of the VSTL endorsement of the de minimis change. The endorsement document must explain why the VSTL, in its engineering judgment, determined that the proposed de minimis change met the definition in this section and otherwise does not require additional testing and certification.

3.5.2.3. *EAC Action.* The EAC will review all proposed *de minimis* changes endorsed by the VSTL. The EAC has sole authority to determine whether any VSTL endorsed change constitutes a de minimis change under this section. The EAC will inform the Manufacturer and VSTL of its determination in writing.

3.5.2.3.1. EAC approval. If the EAC approves the change as a de minimis change, it shall provide written notice to the Manufacturer and VSTL. The EAC will maintain copies of all approved de minimis changes and otherwise track such changes.

3.5.2.3.2. EAC denial. If the EAC determines that a proposed *de minimis* change cannot be approved, it will inform the VSTL and Manufacturer of its decision. The proposed change will be considered a modification and require testing and certification consistent with this Manual.

3.5.3. *De Minimis Change—Effect of EAC Approval.* EAC approval of a de minimis change permits the Manufacturer to implement the proposed change (as identified, endorsed, and approved) without additional modification testing and certification. Fielding an engineering change not approved by the EAC is a basis for system Decertification.

3.6. Provisional, Pre-Election Emergency Modification. To deal with extraordinary pre-election emergency situations, the EAC has developed a special provisional modification process. This process is to be used only for the emergency situations indicated and only when there is a clear and compelling need for temporary relief until the regular certification process can be followed.

3.6.1. *Purpose.* The purpose of this section is to allow a mechanism within the EAC Certification Program for Manufacturers to modify EAC-certified voting systems in emergency situations immediately before an election. This situation arises when a modification to a voting system is required and an election deadline is imminent, preventing the completion of the full certification process (and State and/or local testing process) in time for Election Day. In such situations the EAC may issue a waiver to the Manufacturer, granting it leave to make the modification without submission for modification testing and certification.

3.6.2. *General Requirements.* A request for an emergency modification waiver may be made by a Manufacturer only *in conjunction with* the State election official whose jurisdiction(s) would be adversely affected if the requested modification were not implemented before Election Day. Requests must be submitted at least 5 calendar days before an election. Only systems previously certified are eligible for such a waiver. To receive a waiver, a Manufacturer must demonstrate the following:

3.6.2.1. The modification is functionally or legally required; that is, the system cannot be fielded in an election without the change.

3.6.2.2. The voting system requiring modification is needed by State or local

election officials to conduct a pending Federal election.

3.6.2.3. The voting system to be modified has previously been certified by the EAC.

3.6.2.4. The modification cannot be tested by a VSTL and submitted to the EAC for certification, consistent with the procedural requirements of this Manual, at least 30 days before the pending Federal election.

3.6.2.5. Relevant State law requires Federal certification of the requested modification.

3.6.2.6. The Manufacturer has taken steps to ensure that the modification will properly function as designed, is suitably integrated with the system, and otherwise will not negatively affect system reliability, functionality, or accuracy.

3.6.2.7. The Manufacturer (through a VSTL) has completed as much of the evaluation testing as possible for the modification and has provided the results of such testing to the EAC.

3.6.2.8. The emergency modification is required and otherwise supported by the Chief State Election Official seeking to field the voting system in an impending Federal election.

3.6.3. *Request for Waiver.* A Manufacturer's request for waiver shall be made in writing to the Decision Authority and shall include the following elements:

3.6.3.1. A signed statement providing sufficient description, background, information, documentation, and other evidence necessary to demonstrate that the request for a waiver meets each of the eight requirements stated in Section 3.5.2 above.

3.6.3.2. A signed statement from the Chief State Election Official requiring the emergency modification. This signed statement shall identify the pending election creating the emergency situation and attest that (1) the modification is required to field the system, (2) State law (citation) requires EAC action to field the system in an election, and (3) normal timelines required under the EAC Certification Program cannot be met.

3.6.3.3. A signed statement from a VSTL that there is insufficient time to perform necessary testing and complete the certification process. The statement shall also state what testing the VSTL has performed on the modification to date, provide the results of such tests, and state the schedule for completion of testing.

3.6.3.4. A detailed description of the modification, the need for the modification, how it was developed, how it addresses the need for which it was designed, its impact on the voting system, and how the modification will be fielded or implemented in a timely manner consistent with the Manufacturer's quality control program.

3.6.3.5. All documentation of tests performed on the modification by the Manufacturer, a laboratory, or other third party.

3.6.3.6. A stated agreement signed by the Manufacturer's representative agreeing to take the following action:

3.6.3.6.1. Submit for testing and certification, consistent with Chapter 4 of this Manual, any voting system receiving a waiver under this section that has not already been submitted. This action shall be taken immediately.

3.6.3.6.2. Abstain from representing the modified system as EAC certified. The modified system has not been certified; rather, the originally certified system has received a waiver providing the Manufacturer leave to modify it.

3.6.3.6.3. Submit a report to the EAC regarding the performance of the modified voting system within 60 days of the Federal election that served as the basis for the waiver. This report shall (at a minimum) identify and describe any (1) performance failures, (2) technical failures, (3) security failures, and/or (4) accuracy problems.

3.6.4. *EAC Review.* The EAC will review all waiver requests submitted in a timely manner and make determinations regarding the requests. Incomplete requests will be returned for resubmission with a written notification regarding its deficiencies.

3.6.5. *Letter of Approval.* If the EAC approves the modification waiver, the Decision Authority shall issue a letter granting the temporary waiver within five (5) business days of receiving a complete request.

3.6.6. *Effect of Grant of Waiver.* An EAC grant of waiver for an emergency modification is not an EAC certification of the modification. Waivers under this program grant Manufacturers leave to only temporarily amend previously certified systems without testing and certification for the specific election noted in the request. Without such a waiver, such action would ordinarily result in Decertification of the modified system (See Chapter 7). Systems receiving a waiver shall satisfy any State requirement that a system be nationally or federally certified. In addition—

3.6.6.1. All waivers are temporary and expire 60 days after the Federal election for which the system was modified and the waiver granted.

3.6.6.2. Any system granted a waiver must be submitted for testing and certification. This shall be accomplished as soon as possible.

3.6.6.3. The grant of a waiver is no indication that the modified system will ultimately be granted a certification.

3.6.7. *Denial of Request for Waiver.* A request for waiver may be denied by the EAC if the request does not meet the requirements noted above, fails to follow the procedure established by this section or otherwise fails to sufficiently support a conclusion that the modification at issue is needed, will function properly, and is in the public interest. A denial of a request for emergency modification by the EAC shall be final and not subject to appeal. Manufacturers may submit for certification, consistent with Chapter 4 of this Manual, modifications for which emergency waivers were denied.

3.6.8. *Publication Notice of Waiver.* The EAC will post relevant information relating to the temporary grant of an emergency waiver on its Web site. This information will be posted upon grant of the waiver and removed upon the waiver's expiration. This posting will include information concerning the limited nature and effect of the waiver.

4. Certification Testing and Technical Review

4.1. Overview. This chapter discusses the procedural requirements for submitting a voting system to the EAC for testing and review. The testing and review process requires an application, employment of an EAC-accredited testing laboratory, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification by the Decision Authority.

4.2. Policy. Generally, to receive an initial determination on an EAC certification for a voting system, a registered Manufacturer must have (1) submitted an EAC-approved application for certification, (2) had a VSTL submit an EAC-approved test plan, (3) had a VSTL test a voting system to applicable voting system standards, (4) had a VSTL submit a test report to the EAC for technical review and approval, and (5) received EAC approval of the report in an Initial Decision on Certification.

4.3. Certification Application. The first step in submitting a voting system for certification is submission of an application package. The package contains an application form and a copy of the voting system's Implementation Statement (see VVSG 2005–Version 1.0, Vol. I, Section 1.6.4), functional diagram, and System Overview documentation submitted to the VSTL as a part of the Technical Data Package (see VVSG 2005—Version 1.0, Vol. II, Section 2.2). This application process initiates the certification process and provides the EAC with needed information.

4.3.1. *Information on Application Form.* The application (application form) provides the EAC certain pieces of information that are essential at the outset of the certification process. This information includes the following:

4.3.1.1. *Manufacturer Information.* Identification of the Manufacturer (name and three-letter identification code).

4.3.1.2. *Selection of Accredited Laboratory.* Selection and identification of the VSTL that will perform voting system testing and other prescribed laboratory action consistent with the requirements of this Manual. Once selected, a Manufacturer may NOT replace the selected VSTL without the express written consent of the Program Director. Such permission will be granted solely at the discretion of the Program Director and only upon demonstration of good cause.

4.3.1.3. *Voting System Standards Information.* Identification of the VVSG or VSS, including the document's date and version number, to which the Manufacturer wishes to have the identified voting system tested and certified.

4.3.1.4. *Nature of the Submission.* Manufacturers must identify the nature of their submission by selecting one of the following four submission types:

4.3.1.4.1. New system. For purposes of this Manual, a new system is defined as a voting system that has not been previously tested to any applicable Federal standards.

4.3.1.4.2. System not previously EAC certified. This term describes any voting system not previously certified by the EAC, including systems previously tested and

qualified by NASED or systems previously tested and denied certification by the EAC.

4.3.1.4.3. Modification. A modification is any change to a previously EACcertified voting system's hardware, software, or firmware.

4.3.1.4.4. Certification upgrade. This term defines any system previously certified by the EAC but submitted (without modification) for additional testing and certification to a higher standard (e.g., to a newer version of the VVSG).

4.3.1.5. *Identification of the Voting System.* Manufacturers must identify the system submitted for testing by providing its name and applicable version number. If the system submitted has been previously fielded, but the Manufacturer wishes to change its name or version number after receipt of EAC certification, it must provide identification information on both the past name or names and the new, proposed name. This requirement might occur in systems submitted for modification, for their first EAC certification, or for a certification upgrade.

4.3.1.6. *Description of the Voting System.* Manufacturers must provide a brief description of the system or modification being submitted for testing and certification. This description shall include the following information:

4.3.1.6.1. A listing of all components of the system submitted.

4.3.1.6.2. Each component's version number.

4.3.1.6.3. A complete list of each configuration of the system's components that could be fielded as the certified voting system.[1]

4.3.1.6.4. Any other information necessary to identify the specific configuration being submitted for certification.

4.3.1.7. Date Submitted. Manufacturers must note the date the application was submitted for EAC approval.

4.3.1.8. Signature. The Manufacturer must affix the signature of the authorized management representative.

4.3.2. *Submission of the Application Package.* Manufacturers must submit a copy of the application form described above and copies of the voting system's (1) Implementation Statement, (2) functional diagram, and (3) System Overview documentation submitted to the VSTL as a part of the Technical Data Package.

4.3.2.1. Application Form. Application forms will be available on the EAC Web site: *http://www.eac.gov*. The application form submitted to the EAC must be signed; dated; and fully, accurately, and completely filled out. The EAC will not accept incomplete or inaccurate applications.

4.3.2.2. Implementation Statement. The Manufacturer must submit with the application form a copy of the voting system's Implementation Statement, which must meet the requirements of the VVSG (VVSG 2005—Version 1.0, Vol. I, Section 1.6.4). If an existing system is being submitted with a modification, the Manufacturer must submit a copy of a revised Implementation Statement.

4.3.2.3. Functional Diagram. The Manufacturer must submit with the application form a high-level Functional Diagram of the voting system that includes all of its components. The diagram must portray how the various components relate and interact.

4.3.2.4. System Overview. The Manufacturer must submit with the application form a copy of the voting system's System Overview documentation submitted to the VSTL as a part of the Technical Data Package. This document must meet the requirements of the VVSG (VVSG 2005—Version 1.0, Vol. II, Section 2.2).

4.3.2.5. Submission. Applications, with the accompanying documentation, shall be submitted in Adobe PDF, Microsoft Word, or other electronic formats as prescribed by the Program Director. Information on how to submit packages will be posted on the EAC Web site: *http://www.eac.gov*.

4.3.3. *EAC Review.* Upon receipt of a Manufacturer's application package, the EAC will review the submission for completeness and accuracy. If the application package is incomplete, the EAC will return it to the Manufacturer with instructions for resubmission. If the form submitted is acceptable, the Manufacturer will be notified and provided a unique application number within five (5) business days of the EAC's receipt of the application.

4.4. Test Plan. The Manufacturer shall authorize the VSTL identified in its application to submit a test plan directly to the EAC. This plan shall provide for testing of the system sufficient to ensure it is functional and meets all applicable voting system standards.

4.4.1. *Development.* An accredited laboratory will develop test plans that use appropriate test protocols, standards, or test suites developed by the laboratory. Laboratories must use all applicable protocols, standards, or test suites issued by the EAC.

4.4.2. *Required Testing.* Test plans shall be developed to ensure that a voting system is functional and meets all requirements of the applicable, approved voting system standards. The highest level of care and vigilance is required to ensure that comprehensive test plans are created. A test plan should ensure that the voting system meets all applicable standards and that test results and other factual evidence of the testing are clearly documented. System testing must meet the requirements of the VVSG. Generally, full testing will be required of any voting system applying for certification, regardless of previous certification history.

4.4.2.1. New System. A new system shall be subject to full testing of all hardware and software according to applicable voting system standards.

4.4.2.2. System Not Previously EAC Certified. A system not previously certified by the EAC shall be fully tested as a new system.

4.4.2.3. Modification. A modification to a previously EAC-certified voting system shall be tested in a manner necessary to ensure that all changes meet applicable voting system standards and that the modified system (as a whole) will properly and reliably function. Any system submitted for modification shall be subject to full testing of the modifications (delta testing) and those systems or subsystems altered or impacted by the modification (regression testing). The system will also be subject to system integration testing to ensure overall functionality. The modification will be tested to the version or versions of the VVSG/VSS currently accepted for testing and certification by the EAC. This requirement, however, does not mean that the full system must be tested to such standards. If the system has been previously certified to a VVSG/VSS version deemed acceptable by the EAC (see Section 3.2.2.2), it may retain that level of certification with only the modification being tested to the present version(s).

4.4.2.4. EAC Identified Systems. Previously certified systems identified for retesting by the EAC (see Section 3.4.4) shall be tested as directed by the Program Director (after consultation with NIST, VSTLs, or other technical experts as necessary).

4.4.2.5. Certification Upgrade. A previously certified system submitted for testing to a new voting system standard (without modification) shall be tested in a manner necessary to ensure that the system meets all requirements of the new standards. The VSTL shall create a test plan that identifies the differences between the new and old standards and, based upon the differences, fully retest all hardware and software components affected.

4.4.3. *Format.* Test labs shall issue test plans consistent with the requirements in VVSG, Vol. II and any applicable EAC guidance.

4.4.4. *EAC Approval.* All test plans are subject to EAC approval. No test report will be accepted for technical review unless the test plan on which it is based has been approved by EAC' s Program Director.

4.4.4.1. Review. All test plans must be reviewed for adequacy by the Program Director. For each submission, the Program Director will determine whether the test plan is acceptable or unacceptable. Unacceptable plans will be returned to the laboratory for further action. Acceptable plans will be. approved. Although Manufacturers may direct test labs to begin testing before approval of a test plan, the Manufacturer bears the full risk that the test plan (and thus any tests preformed) will be deemed unacceptable.

4.4.4.2. Unaccepted Plans. If a plan is not accepted, the Program Director will return the submission to the Manufacturer's identified VSTL for additional action. Notice of unacceptability will be provided in writing to the laboratory and include a description of the problems identified and steps required to remedy the test plan. A copy of this notice

[1] An EAC certification applies to the configuration of components (the voting system) presented for testing. A voting system may be fielded without using each of the components that formed the system presented, since voting systems, as certified, may contain optional or redundant components to meet the varying needs of election officials. Systems may not be fielded with additional components or without sufficient components to properly prosecute an election, as neither individual components nor separately tested systems may be combined to create new certified voting systems.

will also be sent to the Manufacturer. Questions concerning the notice shall be forwarded to the Program Director in writing. Plans that have not been accepted may be resubmitted for review after remedial action is taken.

4.4.4.3. Effect of Approval. Approval of a test plan is required before a test report may be filed. In most cases, approval of a test plan signifies that the tests proposed, if performed properly, are sufficient to fully test the system. A test plan, however, is approved based on the information submitted. New or additional information may require a change in testing requirements at any point in the certification process.

4.5. Testing. During testing, Manufacturers are responsible for enabling VSTLs to report any changes to a voting system or an approved test plan directly to the EAC. Manufacturers shall also enable VSTLs to report all test failures or anomalies directly to the EAC.

4.5.1. *Changes.* Any changes to a voting system, initiated as a result of the testing process, will require submission of an updated Implementation Statement, functional diagram, and System Overview document and, potentially, an updated test plan. Test plans must be updated whenever a change to a voting system requires deviation from the test plan originally approved by the EAC. Changes requiring alteration or deviation from the originally approved test plan must be submitted to the EAC (by the VSTL) for approval before the completion of testing. The submission shall include an updated Implementation Statement, functional diagram, and System Overview, as needed. Changes not affecting the test plan shall be reported in the test report. The submission shall include an updated Implementation Statement, functional diagram, and System Overview document, as needed.

4.5.2. *Test Anomalies or Failures.* Manufacturers shall enable VSTLs to notify the EAC directly and independently of any test anomalies, or failures during testing. The VSTLs shall ensure that all anomalies or failures are addressed and resolved before testing is completed. All test failures, anomalies and actions taken to resolve such failures and anomalies shall be documented by the VSTL in an appendix to the test report submitted to the EAC. These matters shall be reported in a matrix, or similar format, that identifies the failure or anomaly, the applicable voting system standards, and a description of how the failure or anomaly was resolved. Associated or similar anomalies/failures may be summarized and reported in a single entry on the report (matrix) as long as the nature and scope of the anomaly/failure is clearly identified.

4.6. *Test Report.* Manufacturers shall enable their identified VSTL to submit test reports directly to the EAC. The VSTL shall submit test reports only if the voting system has been tested and all tests identified in the test plan have been successfully performed.

4.6.1. *Submission.* The test reports shall be submitted to the Program Director. The Program Director shall review the submission for completeness. Any reports showing incomplete or unsuccessful testing will be returned to the test laboratory for action and resubmission. Notice of this action will be provided to the Manufacturer. Test reports shall be submitted in Adobe PDF, Microsoft Word, or other electronic formats as prescribed by the Program Director. Information on how to submit reports will be posted on the EAC Web site: *http://www.eac.gov.*

4.6.2. *Format.* Manufacturers shall ensure that test labs submit reports consistent with the requirements in the VVSG and this Manual.

4.6.3. *Technical Review.* A technical review of the test report, technical documents, and test plan will be conducted by EAC technical experts. The EAC may require the submission of additional information from the VSTL or Manufacturer if deemed necessary to complete the review. These experts will submit a report outlining their findings to the Program Director. The report will provide an assessment of the completeness, appropriateness, and adequacy of the VSTL's testing as documented in the test report.

4.6.4. *Program Director's Recommendation.* The Program Director shall review the report and take one of the following actions:

4.6.4.1. Recommend certification of the candidate system consistent with the reviewed test report and forward it to the Decision Authority for action (Initial Decision); or

4.6.4.2. Refer the matter back to the technical reviewers for additional specified action and resubmission.

4.7. Initial Decision on Certification. Upon receipt of the report and recommendation forwarded by the Program Director, the Decision Authority shall issue an Initial Decision on Certification. The decision shall be forwarded to the Manufacturer consistent with the requirements of this Manual.

4.7.1. An Initial Decision granting certification shall be processed consistent with Chapter 5 of this Manual.

4.7.2. An Initial Decision denying certification shall be processed consistent with Chapter 6 of this Manual.

5. Grant of Certification

5.1. Overview. The grant of certification is the formal process through which EAC acknowledges that a voting system has successfully completed conformance testing to an appropriate set of standards or guidelines. The grant of certification begins with the Initial Decision of the Decision Authority. This decision becomes final after the Manufacturer confirms that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build, placed in an EAC-approved repository, and can be verified using the Manufacturer's system identification tools. After a certification is issued, the Manufacturer is provided a Certificate of Conformance and relevant information about the system is added to the EAC Web site. Manufacturers with certified voting systems are responsible for ensuring that each system they produce is properly labeled as certified.

5.2. Applicability of This Chapter. This chapter applies when the Decision Authority makes an Initial Decision to grant a certification to a voting system based on the materials and recommendation provided by the Program Director.

5.3. Initial Decision. The Decision Authority shall make a written decision on all voting systems submitted for certification and issue the decision to a Manufacturer. When such decisions result in a grant of certification, the decision shall be considered preliminary and referred to as an Initial Decision pending required action by the Manufacturer. The Initial Decision shall:

5.3.1. State the preliminary determination reached (granting certification).

5.3.2. Inform the Manufacturer of the steps that must be taken to make the determination final and receive a certification. This action shall include providing the Manufacturer with specific instructions, guidance, and procedures for confirming and documenting that the final certified version of the software meets the requirements for:

5.3.2.1. Performing and documenting a trusted build pursuant to Section 5.6 of this chapter.

5.3.2.2. Depositing software in an approved repository pursuant to Section 5.7 of this chapter.

5.3.2.3. Creating and making available system verification tools pursuant to Section 5.8 of this chapter.

5.3.3. Certification is not final until the Manufacturer accepts the certification and all conditions placed on the certification.

5.4. Pre-Certification Requirements. Before an Initial Decision becomes final and a certification is issued, Manufacturers must ensure certain steps are taken. They must confirm that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build (see Section 5.6), has been delivered for deposit in an EAC-approved repository (see Section 5.7), and can be verified using Manufacturer-developed identification tools (see Section 5.8). The Manufacturer must provide the EAC documentation demonstrating compliance with these requirements.

5.5. Trusted Build. A software build (also referred to as a compilation) is the process whereby source code is converted to machine-readable binary instructions (executable code) for the computer. A ''trusted build'' (or trusted compilation) is a build performed with adequate security measures implemented to give confidence that the executable code is a verifiable and faithful representation of the source code. A trusted build creates a chain of evidence from the Technical Data Package and source code submitted to the VSTLs to the actual executable programs that are run on the system. Specifically, the build will do the following:

5.5.1. Demonstrate that the software was built as described in the Technical Data Package.

5.5.2. Show that the tested and approved source code was actually used to build the executable code used on the system.

5.5.3. Demonstrate that no elements other than those included in the Technical Data Package were introduced in the software build.

5.5.4. Document for future reference the configuration of the system certified.

5.6. Trusted Build Procedure. A trusted build is a three-step process: (1) The build environment is constructed, (2) the source code is loaded onto the build environment, and (3) the executable code is compiled and the installation device is created. The process may be simplified for modification to previously certified systems. In each step, a minimum of two witnesses from different organizations is required to participate. These participants must include a VSTL representative and vendor representative. Before creating the trusted build, the VSTL must complete the source code review of the software delivered from the vendor for compliance with the VVSG and must produce and record file signatures of all source code modules.

5.6.1. *Constructing the Build Environment.* The VSTL shall construct the build environment in an isolated environment controlled by the VSTL, as follows:

5.6.1.1. The device that will hold the build environment shall be completely erased by the VSTL to ensure a total and complete cleaning of it. The VSTL shall use commercial off-the-shelf software, purchased by the laboratory, for cleaning the device.

5.6.1.2. The VSTL, with vendor consultation and observation, shall construct the build environment.

5.6.1.3. After construction of the build environment, the VSTL shall produce and record a file signature of the build environment.

5.6.2. *Loading Source Code Onto the Build Environment.* After successful source code review, the VSTL shall load source code onto the build environment as follows:

5.6.2.1. The VSTL shall check the file signatures of the source code modules and build environment to ensure that they are unchanged from their original form.

5.6.2.2. The VSTL shall load the source code onto the build environment and produce and record the file signature of the resulting combination.

5.6.2.3. The VSTL shall capture a disk image of the combination build environment and source code modules immediately before performing the build.

5.6.2.4. The VSTL shall deposit the disk image into an authorized archive to ensure that the build can be reproduced, if necessary, at a later date.

5.6.3. *Creating the Executable Code.* Upon completion of all the tasks outlined above, the VSTL shall produce the executable code.

5.6.3.1. The VSTL shall produce and record a file signature of the executable code.

5.6.3.2. The VSTL shall deposit the executable code into an EAC-approved software repository and create installation disk(s) from the executable code.

5.6.3.3. The VSTL shall produce and record file signatures of the installation disk(s) in order to provide a mechanism to validate the software before installation on the voting system in a purchasing jurisdiction.

5.6.3.4. The VSTL shall install the executable code onto the system submitted for testing and certification before completion of system testing.

5.6.4. *Trusted Build for Modifications.* The process of building new executable code when a previously certified system has been modified is somewhat simplified.

5.6.4.1. The build environment used in the original certification is removed from storage and its file signature verified.

5.6.4.2. After source code review, the modified files are placed onto the verified build environment and new executable files are produced.

5.6.4.3. If the original build environment is unavailable or its file signatures cannot be verified against those recorded from the original certification, then the more labor-intensive process of creating the build environment must be performed. Further source code review may be required of unmodified files to validate that they are unmodified from their originally certified versions.

5.7. Depositing Software in an Approved Repository. After EAC certification has been granted, the VSTL project manager, or an appropriate delegate of the project manager, shall deliver for deposit the following elements in one or more trusted archive(s) (repositories) designated by the EAC:

5.7.1. Source code used for the trusted build and its file signatures.

5.7.2. Disk image of the pre-build, build environment, and any file signatures to validate that it is unmodified.

5.7.3. Disk image of the post-build, build environment, and any file signatures to validate that it is unmodified.

5.7.4. Executable code produced by the trusted build and its file signatures of all files produced.

5.7.5. Installation device(s) and file signatures.

5.8. System Identification Tools. The Manufacturer shall provide tools through which a fielded voting system may be identified and demonstrated to be unmodified from the system that was certified. The purpose of this requirement is to make such tools available to Federal, State, and local officials to identify and verify that the equipment used in elections is unmodified from its certified version. Manufacturers may develop and provide these tools as they see fit. The tools, however, must provide the means to identify and verify hardware and software. The EAC may review the system identification tools developed by the Manufacturer to ensure compliance. System identification tools include the following examples:

5.8.1. Hardware is commonly identified by model number and revision number on the unit, its printed wiring boards (PWBs), and major subunits. Typically, hardware is verified as unmodified by providing detailed photographs of the PWBs and internal construction of the unit. These images may be used to compare with the unit being verified.

5.8.2. Software operating on a host computer will typically be verified by providing a selfbooting compact disk (CD) or similar device that verifies the file signatures of the voting system application files AND the signatures of all nonvolatile files that the application files access during their operation. Note that the creation of such a CD requires having a file map of all nonvolatile files that are used by the voting system. Such a tool must be provided for verification using the file signatures of the original executable files provided for testing. If during the certification process modifications are made and new executable files created, then the tool must be updated to reflect the file signatures of the final files to be distributed for use. For software operating on devices in which a self-booting CD or similar device cannot be used, a procedure must be provided to allow identification and verification of the software that is being used on the device.

5.9. Documentation. Manufacturers shall provide documentation to the Program Director verifying that the trusted build has been performed, software has been deposited in an approved repository, and system identification tools are available to election officials. The Manufacturer shall submit a letter, signed by both its management representative and a VSTL official, stating (under penalty of law) that it has (1) performed a trusted build consistent with the requirements of Section 5.6 of this Manual, (2) deposited software consistent with Section 5.7 of this Manual, and (3) created and made available system identification tools consistent with Section 5.8 of this Manual. This letter shall also include (as attachments) a copy and description of the system identification tool developed under Section 5.8 above.

5.10. Agency Decision. Upon receipt of documentation demonstrating the successful completion of the requirements above and recommendation of the Program Director, the Decision Authority will issue an Agency Decision granting certification and providing the Manufacturer with a certification number and Certificate of Conformance.

5.11. Certification Document. A Certificate of Conformance will be provided to Manufacturers for voting systems that have successfully met the requirements of the EAC Certification Program. The document will serve as the Manufacturer's evidence that a particular system is certified to a particular set of voting system standards. The EAC certification and certificate apply only to the specific voting system configuration(s) identified, submitted and evaluated under the Certification Program. Any modification to the system not authorized by the EAC will void the certificate. The certificate will include the product (voting system) name, the specific model or version of the product tested, the name of the VSTL conducting the testing, identification of the standards to which the system was tested, the EAC certification number for the product, and the signature of the EAC Executive Director. The certificate will also identify each of the various configurations of the voting system's components that may be represented as certified.

5.12. Certification Number and Version Control. Each system certified by the EAC will receive a certification number that is unique to the system and will remain with the system until such time as the system is decertified, sufficiently modified, or tested and certified to newer standards. Generally, when a previously certified system is issued

a new certification number, the Manufacturer will be required to change the system's name or version number.

5.12.1. *New Voting Systems and Those Not Previously Certified by the EAC.* All systems receiving their first certification from the EAC will receive a new certification number. Manufacturers must provide the EAC with the voting system's name and version number during the application process (see Chapter 4). Systems previously certified by another body may retain the previous system name and version number unless the system was modified before its submission to the EAC. Such modified systems must be submitted with a new naming convention (i.e., a new version number).

5.12.2. *Modifications.* Voting systems previously certified by the EAC and submitted for certification of a modification will generally receive a new voting system certification number. Such modified systems must be submitted with a new naming convention (i.e., a new version number). In rare instances, the EAC may authorize retention of the same certification and naming convention when the modification is so minor that is does not represent a substantive change in the voting system. A request for such authorization must be made and approved by the EAC during the application phase of the program.

5.12.3. *Certification Upgrade.* Voting systems previously certified and submitted (without modification) for testing to a new version of the VVSG will receive a new certification number. In such cases, however, the Manufacturer will not be required to change the system name or version.

5.12.4. *De Minimis Change.* Voting systems previously certified and implementing an approved de minimis change (per Chapter 3) will not be issued a new certification number and are not required to implement a new naming convention.

5.13. Publication of EAC Certification. The EAC will publish and maintain on its Web site a list of all certified voting systems, including copies of all Certificates of Conformance, the supporting test report, and information about the voting system and Manufacturer. Such information will be posted immediately following the Manufacturer's receipt of the EAC Final Decision and Certificate of Conformance.

5.14. Representation of EAC Certification. Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

5.15. Mark of Certification Requirement. Manufacturers shall post a mark of certification on all EAC-certified voting systems produced. This mark or label must be securely attached to the system before sale, lease, or release to third parties. A mark of certification shall be made using an EAC-mandated template available for download on the EAC Web site: *http://www.eac.gov.* These templates identify the version of the VVSG or VSS to which the system is certified. Use of this template shall be mandatory. The EAC mark must be displayed as follows:

5.15.1. The Manufacturer may use only the mark of certification that accurately reflects the certification held by the voting system as a whole. The certification of individual components or modifications shall not be independently represented by a mark of certification. In the event a system has components or modifications tested to various (later) versions of the VVSG, the system shall bear only the mark of certification of the standard to which the system (as a whole) was tested and certified (i.e. the lesser standard). Ultimately, a voting system shall only display the mark of certification of the oldest or least rigorous standard to which any of its components are certified.

5.15.2. The mark shall be placed on the outside of a unit of voting equipment in a place readily visible to election officials. The mark need not be affixed to each of the voting system's components. The mark shall be affixed to either (1) each unit that is used to cast ballots or (2) each unit that is used to tabulate ballots.

5.15.3. The notice shall be securely affixed to the voting system. The label shall not be a paper label. ''Securely affixed'' means that the label is etched, engraved, stamped, silk-screened, indelibly printed, or otherwise securely marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other sturdy material fastened to the equipment by use of welding, riveting, or adhesive.

5.15.4. The label must be designed to last the expected lifetime of the voting system in the environment in which the system may be operated and must not be readily detachable.

5.16. Information to Election Officials Purchasing Voting Systems. The user's manual or instruction manual for a certified voting system shall warn purchasers that changes or modifications not tested and certified by the EAC will void the EAC certification of the voting system. In cases in which the manual is provided only in a form other than paper, such as on a CD or over the Internet, the information required in this section may be included in this alternative format provided the election official can reasonably be expected to have the capability to access information in that format.

6. Denial of Certification

6.1. Overview. When the Decision Authority issues an Initial Decision denying certification, the Manufacturer has certain rights and responsibilities. The Manufacturer may request an opportunity to cure the defects identified by the Decision Authority. In addition, the Manufacturer may request that the Decision Authority reconsider the Initial Decision after the Manufacturer has had the opportunity to review the record and submit supporting written materials, data, and the rationale for its position. Finally, in the event reconsideration is denied, the Manufacturer may appeal the decision to the Appeal Authority.

6.2. Applicability of This Chapter. This chapter applies when the Decision Authority makes an Initial Decision to deny an application for voting system certification based on the materials and recommendation provided by the Program Director.

6.3. Form of Decisions. All agency determinations shall be made in writing. Moreover, all materials and recommendations reviewed or used by agency decision makers in arriving at an official determination shall be in written form.

6.4. Effect of Denial of Certification. Upon receipt of the agency's decision denying certification—or in the event of an appeal, subject to the Decision on Appeal—the Manufacturer's application for certification is denied. Such systems will not be reviewed again by the EAC for certification unless the Manufacturer alters the system, retests it, and submits a new application for system certification.

6.5. The Record. The Program Director shall maintain all documents related to a denial of certification. Such documents shall constitute the procedural and substantive record of the decision making process. Records may include the following:

6.5.1. The Program Director's report and recommendation to the Decision Authority.

6.5.2. The Decision Authority's Initial Decision and Final Decision.

6.5.3. Any materials gathered by the Decision Authority that served as a basis for a certification determination.

6.5.4. All relevant and allowable materials submitted by the Manufacturer upon request for reconsideration or appeal.

6.5.5. All correspondence between the EAC and a Manufacturer after the issuance of an Initial Decision denying certification.

6.6. Initial Decision. The Decision Authority shall make and issue a written decision on voting systems submitted for certification. When such decisions result in a denial of certification, the decision shall be considered preliminary and referred to as an Initial Decision. Initial Decisions shall be in writing and contain (1) the Decision Authority's basis and explanation for the decision and (2) notice of the Manufacturer's rights in the denial of certification process.

6.6.1. *Basis and Explanation.* The Initial Decision of the Decision Authority shall accomplish the following:

6.6.1.1. Clearly state the agency's decision on certification.

6.6.1.2. Explain the basis for the decision, including identifying the following:

6.6.1.2.1. The relevant facts.

6.6.1.2.2. The applicable EAC voting system standards (VVSG or VSS).

6.6.1.2.3. The relevant analysis in the Program Director's recommendation.

6.6.1.2.4. The reasoning behind the decision.

6.6.1.3. State the actions the Manufacturer must take, if any, to cure all defects in the voting system and obtain a certification.

6.6.2. *Manufacturer's Rights.* The written Initial Decision must also inform the Manufacturer of its procedural rights under the program, including the following:

6.6.2.1. Right to request reconsideration. The Manufacturer shall be informed of its

right to request a timely reconsideration (see Section 6.9). Such request must be made within 10 calendar days of the Manufacturer's receipt of the Initial Decision.

6.6.2.2. Right to request a copy or otherwise have access to the information that served as the basis of the Initial Decision (''the record'').

6.6.2.3. Right to cure system defects prior to final Agency Decision (see Section 6.8). A Manufacturer may request an opportunity to cure within 10 calendar days of its receipt of the Initial Decision.

6.7. No Manufacturer Action on Initial Decision. If a Manufacturer takes no action (by either failing to request an opportunity to cure or request reconsideration) within 10 calendar days of its receipt of the Initial Decision, the Initial Decision shall become the agency's Final Decision on Certification. In such cases, the Manufacturer is determined to have foregone its right to reconsideration, cure, and appeal. The certification application shall be considered finally denied.

6.8. Opportunity To Cure. Within 10 calendar days of receiving the EAC's Initial Decision on Certification, a Manufacturer may request an opportunity to cure the defects identified in the EAC's Initial Decision. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a voting system denied certification in an Initial Decision may receive a certification without resubmission.

6.8.1. *Manufacturer's Request To Cure.* The Manufacturer must send a request to cure within 10 calendar days of receipt of an Initial Decision. The request must be sent to the Program Director.

6.8.2. *EAC Action on Request.* The Decision Authority will review the request and approve it. The Decision Authority will deny a request to cure only if the proposed plan to cure is inadequate or does not present a viable way to remedy the identified defects. Approval or denial of a request to cure shall be provided the Manufacturer in writing. If the Manufacturer's request to cure is denied, it shall have 10 calendar days from the date it received such notice to request reconsideration of the Initial Decision pursuant to Section 6.6.2.

6.8.3. *Manufacturer's Compliance Plan.* Upon approval of the Manufacturer's request for an opportunity to cure, it shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth steps to be taken to cure all identified defects. It shall include the proposed changes to the system, updated technical information (as required by Section 4.3.2), and a new test plan created and submitted directly to the EAC by the VSTL (testing the system consistent with Section 4.4.2.3). The plan shall also provide for the testing of the amended system and submission of a test report by the VSTL to the EAC for approval. It should provide an estimated date for receipt of this test report and include a schedule of periodic VSTL progress reports to the Program Director.

6.8.4. *EAC Action on the Compliance Plan.* The Decision Authority must review and approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a compliance plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the ''opportunity to cure'' process. The Manufacturer shall have 10 calendar days from the date it receives such notice to request reconsideration of the Initial Decision pursuant to Section 6.6.2.

6.8.5. *Compliance Plan Test Report.* The VSTL shall submit the test report created pursuant to its EAC-approved compliance plan. The EAC shall review the test report, along with the original test report and other materials originally provided. The report will be technically reviewed by the EAC consistent with the procedures laid out in Chapter 4 of this Manual.

6.8.6. *EAC Decision on the System.* After receipt of the test plan, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved compliance plan. This decision shall be issued in the same manner and with the same process and rights as an Initial Decision on Certification.

6.9. Requests for Reconsideration. Manufacturers may request reconsideration of an Initial Decision.

6.9.1. *Submission of Request.* A request for reconsideration must be made within 10 calendar days of the Manufacturer's receipt of an Initial Decision. The request shall be made and sent to the Decision Authority.

6.9.2. *Acknowledgment of Request.* The Decision Authority shall acknowledge receipt of the Manufacturer's request for reconsideration. This acknowledgment shall either enclose all information that served as the basis for the Initial Decision (the record) or provide a date by which the record will be forwarded to the Manufacturer.

6.9.3. *Manufacturer's Submission.* Within 30 calendar days of receipt of the record, a Manufacturer may submit written materials in support of its position, including the following:

6.9.3.1. A written argument responding to the conclusions in the Initial Decision.

6.9.3.2. Documentary evidence relevant to the issues raised in the Initial Decision.

6.9.4. *Decision Authority's Review of Request.* The Decision Authority shall review and consider all relevant submissions of the Manufacturer. In making a decision on reconsideration, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.

6.10. Agency Final Decision. The Decision Authority shall issue a written Agency Decision after review of the Manufacturer's request for reconsideration. This Decision shall be the decision of the agency. The following actions are necessary for writing the decision:

6.10.1.1. Clearly state the agency's determination on the application for certification.

6.10.1.2. Address the issues raised by the Manufacturer in its request for reconsideration.

6.10.1.3. Identify all facts, evidence, and EAC voting system standards (VVSG or VSS) that served as the basis for the decision.

6.10.1.4. Provide the reasoning behind the determination.

6.10.1.5. Identify and provide, as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the Manufacturer's submission or the prior record.

6.10.1.6. Provide the Manufacturer notice of its right to appeal.

6.11. Appeal of Agency Final Decision. A Manufacturer may, upon receipt of an Agency Final Decision denying certification, issue a request for appeal.

6.11.1. *Requesting Appeal.* A Manufacturer may appeal a final decision of the agency by issuing a written request for appeal.

6.11.1.1. *Submission.* Requests must be submitted in writing to the Program Director, addressed to the Chair of the U.S. Election Assistance Commission.

6.11.1.2. *Timing of Appeal.* The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision. Late requests will not be considered.

6.11.1.3. *Contents of Request.*

6.11.1.3.1. The request must clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.

6.11.1.3.2. The request may include additional written argument.

6.11.1.3.3. The request may not reference or include any factual material not in the record.

6.11.2. *Consideration of Appeal.* All timely appeals will be considered by the Appeal Authority.

6.11.2.1. The Appeal Authority shall be two or more EAC Commissioners or other individuals appointed by the Commissioners who have not previously served as the initial or reconsideration authority on the matter.

6.11.2.2. All decisions on appeal shall be based on the record.

6.11.2.3. The determination of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases, the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy highly probable.

6.12. Decision on Appeal. The Appeal Authority shall make a written, final Decision on Appeal and shall provide it to the Manufacturer.

6.12.1. *Contents.* The following actions are necessary to write the Decision on Appeal:

6.12.1.1. State the final determination of the agency.

6.12.1.2. Address the matters raised by the Manufacturer on appeal.

6.12.1.3. Provide the reasoning behind the decisions.

6.12.1.4. State that the Decision on Appeal is final.

6.12.2. *Determinations.* The Appeal Authority may make one of two determinations:

6.12.2.1. *Grant of Appeal.* If the Appeal Authority determines that the conclusions of the Decision Authority shall be overturned *in full*, the appeal shall be granted. In such cases, certification will be approved subject to the requirements of Chapter 5.

6.12.2.2. *Denial of Appeal.* If the Appeal Authority determines that *any part* of the Decision Authority's determination shall be upheld, the appeal shall be denied. In such cases, the application for appeal is finally denied.

6.12.3. *Effect.* All Decisions on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted.

7. Decertification

7.1. Overview. Decertification is the process by which the EAC revokes a certification previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. Decertification is a serious matter. Its use will significantly affect Manufacturers, State and local governments, the public, and the administration of elections. As such, the process for Decertification is complex. It is initiated when the EAC receives information that a voting system may not be in compliance with the applicable voting system standard or the procedural requirements of this Manual. Upon receipt of such information, the Program Director may initiate an Informal Inquiry to determine the credibility of the information. If the information is credible and suggests the system is non-compliant, a Formal Investigation will be initiated. If the results of the Formal Investigation demonstrate non-compliance, the Manufacturer will be provided a Notice of Non-Compliance. Before a Final Decision on Decertification is made, the Manufacturer will have the opportunity to remedy any defects identified in the voting system and present information for consideration by the Decertification Authority. A Decertification of a voting system may be appealed in a timely manner.

7.2. Decertification Policy. Voting systems certified by the EAC are subject to Decertification. Systems shall be decertified if (1) they are shown not to meet applicable voting system standard, (2) they have been modified or changed without following the requirements of this Manual, or (3) the Manufacturer has otherwise failed to follow the procedures outlined in this Manual so that the quality, configuration, or compliance of the system is in question. Decertification of a voting system is a serious matter. Systems will be decertified only after completion of the process outlined in this chapter.

7.3. Informal Inquiry. An Informal Inquiry is the first step taken when information is presented to the EAC that suggests a voting system may not be in compliance with the applicable voting system standard or the procedural requirements of this Manual.

7.3.1. *Informal Inquiry Authority.* The authority to conduct an Informal Inquiry shall rest with the Program Director.

7.3.2. *Purpose.* The sole purpose of the Informal Inquiry is to determine whether a Formal Investigation is warranted. The outcome of an Informal Inquiry is limited to a decision on referral for investigation.

7.3.3. *Procedure.* Informal Inquiries do not follow a formal process.

7.3.3.1. *Initiation.* Informal Inquiries are initiated at the discretion of the Program Director. They may be initiated any time the Program Director receives attributable, relevant information that suggests a certified voting system may require Decertification. The information shall come from a source that has directly observed or witnessed the reported occurrence. Such information may be a product of the Certification Quality Monitoring Program (see Chapter 8). Information may also come from State and local election officials, voters, or others who have used or tested a given voting system. The Program Director may notify a Manufacturer that an Informal Inquiry has been initiated, but such notification is not required. Initiation of an inquiry shall be documented through the creation of a Memorandum for the Record.

7.3.3.2. *Inquiry.* The Informal Inquiry process is limited to that inquiry necessary to determine whether a Formal Investigation is required. In other words, the Program Director shall conduct such inquiry necessary to determine (1) that the information obtained is credible and (2) that the information, if true, would serve as a basis for Decertification. The nature and extent of the inquiry process will vary depending on the source of the information. For example, an Informal Inquiry initiated as a result of action taken under the Certification Quality Monitoring Program will often require the Program Director merely to read the report issued as a result of the Quality Monitoring action. On the other hand, information provided by election officials or by voters who have used a voting system may require the Program Director (or assigned technical experts) to perform an in-person inspection or make inquiries of the Manufacturer.

7.3.3.3. *Conclusion.* An Informal Inquiry shall be concluded after the Program Director is in a position to determine the credibility of the information that initiated the inquiry and whether that information, if true, would require Decertification. The Program Director may make only two conclusions: (1) refer the matter for a Formal Investigation or (2) close the matter without additional action or referral.

7.3.4. *Closing the Matter Without Referral.* If the Program Director determines, after Informal Inquiry, that a matter does not require a Formal Investigation, the Program Director shall close the inquiry by filing a Memorandum for the Record. This document shall state the focus of the inquiry, the findings of the inquiry and the reasons a Formal Investigation was not warranted.

7.3.5. *Referral.* If the Program Director determines, after Informal Inquiry, that a matter requires a Formal Investigation, the Program Director shall refer the matter in writing to the Decision Authority. In preparing this referral, the Program Director shall do the following:

7.3.5.1. State the facts that served as the basis for the referral.

7.3.5.2. State the findings of the Program Director.

7.3.5.3. Attach all documentary evidence that served as the basis for the conclusion.

7.3.5.4. Recommend a Formal Investigation, specifically stating the system to be investigated and the scope and focus of the proposed investigation.

7.4. Formal Investigation. A Formal Investigation is an official investigation to determine whether a voting system requires Decertification. The end result of a Formal Investigation is a Report of Investigation.

7.4.1. *Formal Investigation Authority.* The Decision Authority shall have the authority to initiate and conclude a Formal Investigation by the EAC.

7.4.2. *Purpose.* The purpose of a Formal Investigation is to gather and document relevant information sufficient to make a determination on whether an EAC-certified voting system requires Decertification consistent with the policy put forth in Section 7.2 above.

7.4.3. *Initiation of Investigation.* The Decision Authority shall authorize the initiation of an EAC Formal Investigation.

7.4.3.1. *Scope.* The Decision Authority shall clearly set the scope of the investigation by identifying (in writing) the voting system (or systems) and specific procedural or operational non-conformance to be investigated. The nonconformance or non-conformances to be investigated shall be set forth in the form of numbered allegations.

7.4.3.2. *Investigator.* The Program Director shall be responsible for conducting the investigation unless the Decision Authority appoints another individual to conduct the investigation. The Program Director (or Decision Authority appointee) may assign staff or technical experts, as required, to investigate the matter.

7.4.4. *Notice of Formal Investigation.* Upon initiation of a Formal Investigation, notice shall be given the Manufacturer of the scope of the investigation. The following actions are necessary to prepare this notice:

7.4.4.1. Identify the voting system and specific procedural or operation nonconformance being investigated (scope of investigation).

7.4.4.2. Provide the Manufacturer an opportunity to provide relevant information in writing.

7.4.4.3. Provide an estimated timeline for the investigation.

7.4.5. *Investigation.* Because voting systems play a vital role in our democratic process, investigations shall be conducted impartially, diligently, promptly, and confidentially. Investigators shall use techniques to gather necessary information that meet these requirements.

7.4.5.1. *Fair and Impartial Investigation.* All Formal Investigations shall be conducted in a fair and impartial manner. All individuals assigned to an investigation must be free from any financial conflicts of interest.

7.4.5.2. *Diligent Collection of Information.* All investigations shall be conducted in a meticulous and thorough manner. Investigations shall gather all relevant information and documentation that is reasonably available. The diligent collection of information is vital for informed decision making.

7.4.5.3. *Prompt Collection of Information.* Determinations that may affect the administration of Federal elections must be made with all reasonable speed. EAC determinations on Decertification will affect the actions of State and local election officials conducting elections. As such, all investigations regarding Decertification must proceed with an appropriate sense of urgency.

7.4.5.4. *Confidential Collection of Information.* Consistent with Federal law, information pertaining to a Formal Investigation should not be made public until the Report of Investigation is complete. The release of incomplete and unsubstantiated information or predecisional opinions that may be contrary or inconsistent with the final determination of the EAC could cause public confusion or could unnecessarily negatively affect public confidence in active voting systems. Such actions could serve to impermissibly affect election administration and voter turnout. All predecisional investigative materials must be appropriately safeguarded.

7.4.5.5. *Methodologies.* Investigators shall gather information by means consistent with the four principles noted above. Investigative tools include (but are not limited to) the following:

7.4.5.5.1. Interviews. Investigators may interview individuals (such as State and local election officials, voters, or representatives of the Manufacturer) with relevant information. All interviews shall be reduced to written form; each interview should be summarized in a statement that is reviewed, approved, and signed by the subject.

7.4.5.5.2. Field audits.

7.4.5.5.3. Manufacturer site audits.

7.4.5.5.4. Written interrogatories. Investigators may pose specific, written questions to the Manufacturer for the purpose of gathering information relevant to the investigation. The Manufacturer shall respond to the queries within a reasonable timeframe (as specified in the request).

7.4.5.5.5. System testing. Testing may be performed in an attempt to reproduce a condition or failure that has been reported. This testing will be conducted at a VSTL under contract with the EAC.

7.4.5.6. *Report of Investigation.* The end result of a Formal Investigation is a Report of Investigation.

7.4.6. *Report of Investigation.* The Report of Investigation serves, primarily, to document (1) all relevant and reliable information gathered in the course of the investigation, and (2) the conclusion reached by the Decision Authority.

7.4.6.1. *When Complete.* The report is complete and final when certified and signed by the Decision Authority.

7.4.6.2. *Contents of the Report of Investigation.* The following actions are necessary to prepare the written report:

7.4.6.2.1. Restate the scope of the investigation, identifying the voting system and specific matter investigated.

7.4.6.2.2. Briefly describe the investigative process employed.

7.4.6.2.3. Summarize the relevant and reliable facts and information gathered in the course of the investigation.

7.4.6.2.4. Attach all relevant and reliable evidence collected in the course of the investigation that documents the facts. All facts shall be documented in written form.

7.4.6.2.5. Analyze the information gathered.

7.4.6.2.6. Clearly state the findings of the investigation.

7.4.7. *Findings, Report of Investigation.* The Report of Investigation shall state one of two conclusions. After gathering and reviewing all applicable facts, the report shall find each allegation investigated to be either (1) substantiated, or (2) unsubstantiated.

7.4.7.1. *Substantiated Allegation.* An allegation is substantiated if a preponderance of the relevant and reliable information gathered requires that the voting system at issue be decertified (consistent with the policy set out in Section 7.2). If any allegation is substantiated, a Notice of Non-Compliance must be issued.

7.4.7.2. *Unsubstantiated Allegation.* An allegation is unsubstantiated if the preponderance of the relevant and reliable information gathered does not require Decertification (see Section 7.2). If all allegations are unsubstantiated, the matter shall be closed and a copy of the report forwarded to the Manufacturer.

7.4.8. *Publication of Report.* The report shall not be made public nor released to the public until final.

7.5. Effect of Informal Inquiry or Formal Investigation on Certification. A voting system's EAC certification is not affected by the initiation or conclusion of an Informal Inquiry or Formal Investigation. Systems under investigation remain certified until a final Decision on Decertification is issued by the EAC.

7.6. Notice of Non-Compliance. If an allegation in a Formal Investigation is substantiated, the Decision Authority shall send the Manufacturer a Notice of Non-Compliance. The Notice of Non-Compliance is not, itself, a Decertification of the voting system. The purpose of the notice is to (1) notify the Manufacturer of the non-compliance and the EAC' s intent to Decertify the system and (2) inform the Manufacturer of its procedural rights so that it may be heard prior to Decertification.

7.6.1. *Non-Compliance Information.* The following actions are necessary for preparing a Notice of Non-Compliance:

7.6.1.1. Provide a copy of the Report of Investigation to the Manufacturer.

7.6.1.2. Identify the non-compliance, consistent with the Report of Investigation.

7.6.1.3. Inform the Manufacturer that if the voting system is not made compliant, the voting system will be decertified.

7.6.1.4. State the actions the Manufacturer must take, if any, to bring the voting system into compliance and avoid Decertification.

7.6.2. *Manufacturer's Rights.* The written Notice of Non-Compliance must also inform the Manufacturer of its procedural rights under the program, which include the following:

7.6.2.1. *Right to Present Information Prior to Decertification Decision.* The Manufacturer shall be informed of its right to present information to the Decision Authority prior to a determination of Decertification.

7.6.2.2. *Right to Have Access to the Information That Will Serve as the Basis of the Decertification Decision.* The Manufacturer shall be provided the Report of Investigation and any other materials that will serve as the basis of an Agency Decision on Decertification.

7.6.2.3. *Right to Cure System Defects Prior to the Decertification Decision.* A Manufacturer may request an opportunity to cure within 20 calendar days of its receipt of the Notice of Non-Compliance.

7.7. Procedure for Decision on Decertification. The Decision Authority shall make and issue a written Decision on Decertification whenever a Notice of Non-Compliance is issued. The Decision Authority will not take such action until the Manufacturer has had a reasonable opportunity to cure the non-compliance and submit information for consideration.

7.7.1. *Opportunity to Cure.* The Manufacturer shall have an opportunity to cure a nonconforming voting system in a timely manner prior to Decertification. A cure is timely when the cure process can be completed before the next Federal election, meaning that any proposed cure must be in place before any individual jurisdiction fielding the system holds a Federal election. The Manufacturer must request the opportunity to cure. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a Manufacturer may modify a non-compliant voting system, remedy procedural discrepancies, or otherwise bring its system into compliance without resubmission or Decertification.

7.7.1.1. Manufacturer's Request to Cure. Within 10 calendar days of receiving the EAC's Notice of Non-Compliance, a Manufacturer may request an opportunity to cure all defects identified in the Notice of Non-Compliance in a timely manner. The request must be sent to the Decision Authority and outline how the Manufacturer would modify the system, update the technical information (as required by Section 4.3.2), have the VSTL create a test plan and test the system, and obtain EAC approval before the next election for Federal office.

7.7.1.2. EAC Action on Request. The Decision Authority will review the request and approve it if the defects identified in the Notice of Non-Compliance may reasonably be cured before the next election for Federal office.

7.7.1.3. Manufacturer's Compliance Plan. Upon approval of the Manufacturer's request for an opportunity to cure, the Manufacturer shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth the steps to be taken (including time frames) to cure all identified defects in a timely manner. The

plan shall describe the proposed changes to the system, provide for modification of the system, update the technical information required by Section 4.3.2, include a test plan delivered to the EAC by the VSTL (testing the system consistent with Section 4.4.2.3), and provide for the VSTL's testing of the system and submission of the test report to the EAC for approval (assume at least 20 working days). The plan shall also include a schedule of periodic progress reports to the Program Director.[2]

7.7.1.4. EAC Action on the Compliance Plan. The Decision Authority must review and approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a Compliance Plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the ''opportunity to cure'' process.

7.7.1.5. VSTL's Submission of the Compliance Plan Test Report. The VSTL shall submit the test report created pursuant to the Manufacturer's EAC-approved Compliance Plan. The EAC shall review the test report and any other necessary or relevant materials. The report will be technically reviewed by the EAC in a manner similar to the procedures described in Chapter 4 of this Manual.

7.7.1.6. EAC Decision on the System. After receipt of the VSTL's test report, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved Compliance Plan. For the purpose of planning, the Manufacturer should allow at least 20 working days for this process.

7.7.2. *Opportunity to Be Heard.* The Manufacturer may submit written materials in response to the Notice of Non-Compliance and Report of Investigation. These documents shall be considered by the Decision Authority when making a determination on Decertification. The Manufacturer shall ordinarily have 20 calendar days from the date it received the Notice of Non-Compliance (or in the case of a failed effort to cure, the termination of that process) to deliver its submissions to the Decision Authority. When warranted by public interest (because a delay in making a determination on Decertification would affect the timely, fair, and effective administration of a Federal election), however, the Decision Authority may provide a Manufacturer less time to submit information. This alternative period (and the basis for it) must be stated in the Notice of Non-Compliance. The alternative time period must allow the Manufacturer a reasonable amount of time to gather its submissions. Submissions may include the following materials:

7.7.2.1. A written argument responding to the conclusions in the Notice of NonCompliance or Report of Investigation.

7.7.2.2. Documentary evidence relevant to the allegations or conclusions in the Notice of Non-Compliance.

7.7.3. *Decision on Decertification.* The Decision Authority shall make an agency determination on Decertification.

7.7.3.1. Timing. The Decision Authority shall promptly make a decision on Decertification. The Decision Authority may not issue such a decision, however, until the Manufacturer has provided all of its written materials for consideration or the time allotted for submission (usually 20 calendar days) has run out.

7.7.3.2. Considered Materials. The Decision Authority shall review and consider all relevant submissions of the Manufacturer. In making a Decision on Decertification, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.

7.7.3.3. Agency Decision. The Decision Authority shall issue a written Agency Decision after review of applicable materials. This decision shall be the final decision of the agency. The following actions are necessary to write the decision:

7.7.3.3.1. Clearly state the agency's determination on the Decertification, specifically addressing the areas of non-compliance investigated.

7.7.3.3.2. Address the issues raised by the Manufacturer in the materials it submitted for consideration.

7.7.3.3.3. Identify all facts, evidence, procedural requirements, and/or voting system standards (VVSG or VSS) that served as the basis for the decision.

7.7.3.3.4. Provide the reasoning behind the decision.

7.7.3.3.5. Identify, and provide as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the Manufacturer's submission or the Report of Investigation.

7.7.3.3.6. Provide the Manufacturer notice of its right to appeal.

7.8. Effect of Decision Authority's Decision on Decertification. The Decision Authority's Decision on Decertification is the determination of the agency. A Decertification is effective upon the EAC's publication or Manufacturer's receipt of the decision (whichever is earlier). A Manufacturer that has had a voting system decertified may appeal that decision.

7.9. Appeal of Decertification. A Manufacturer may, upon receipt of an Agency Final Decision on Decertification, request an appeal in a timely manner.

7.9.1. *Requesting Appeal.*

7.9.1.1. Submission. Requests must be submitted by the Manufacturer in writing to the Chair of the U.S. Election Assistance Commission.

7.9.1.2. Timing of Appeal. The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision on Decertification. Late requests will not be considered.

7.9.1.3. Contents of Request. The following actions are necessary for the Manufacturer to write and submit a request for appeal:

7.9.1.3.1. Clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.

7.9.1.3.2. Include additional written argument, if any.

7.9.1.3.3. Do not reference or include any factual material not previously considered or submitted to the EAC.

7.9.1.4. Effect of Appeal on Decertification. The initiation of an appeal does not affect the decertified status of a voting system. Systems are decertified upon notice of Decertification in the agency's Decision on Decertification (see Section 7.8).

7.9.2. *Consideration of Appeal.* All timely appeals will be considered by the Appeal Authority.

7.9.2.1. The Appeal Authority shall be two or more EAC Commissioners or other individual or individuals appointed by the Commissioners who have not previously served as investigators, advisors, or decision makers in the Decertification process.

7.9.2.2. All decisions on appeal shall be based on the record.

7.9.2.3. The decision of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy to be highly probable.

7.9.3. *Decision on Appeal.* The Appeal Authority shall make a written, final Decision on Appeal that it shall provide to the Manufacturer. Each Decision on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted. The following actions are necessary to write a Decision on Appeal:

7.9.3.1. State the final determination of the agency.

7.9.3.2. Address the matters raised by the Manufacturer on appeal.

7.9.3.3. Provide the reasoning behind the decision.

7.9.3.4. State that the Decision on Appeal is final.

7.9.4. *Effect of Appeal.*

7.9.4.1. Grant of Appeal. If a Manufacturer's appeal is granted in whole, the decision of the Decision Authority is reversed. The voting system shall have its certification reinstated. For purposes of this program, the system shall be treated as though it was never decertified.

7.9.4.2. Denial of Appeal. If a Manufacturer's appeal is denied in whole or in part, the decision of the Decision Authority is upheld. The voting system remains decertified and no additional appeal is available.

7.10. Effect of Decertification. A voting system that has been decertified no longer holds an EAC certification under the Certification Program. For purposes of this Manual and the program, a decertified system will be treated as any other uncertified voting system. As such, the effects of Decertification are as follows:

[2] Manufacturers should also be cognizant of State certification procedures and local pre-election logic and accuracy testing. Systems that meet EAC guidelines will also be impacted by independent State and local requirements. These requirements may also prevent a system from being fielded, irrespective of EAC Certification.

7.10.1. The Manufacturer may not represent the voting system as certified.

7.10.2. The voting system may not be labeled with a mark of certification.

7.10.3. The voting system will be removed from the EAC list of certified systems.

7.10.4. The EAC will notify State and local election officials of the Decertification.

7.11. Recertification. A decertified system may be resubmitted for certification. Such systems shall be treated as any other system seeking certification. The Manufacturer shall present an application for certification consistent with the instructions of this Manual.

8. Quality Monitoring Program

8.1. Overview. The quality of any product, including a voting system, depends on two specific elements: (1) the design of the product or system and (2) the care and consistency of the manufacturing process. The EAC testing and certification process focuses on voting system design by ensuring that a representative sample of a system meets the technical specifications of the applicable EAC voting system standards. This process, commonly called ''type acceptance,'' determines whether the representative sample submitted for testing meets the requirements. What type acceptance does not do is explore whether variations in manufacturing may allow production of non-compliant systems. Generally, the quality of the manufacturing is the responsibility of the Manufacturer. After a system is certified, the vendor assumes primary responsibility for compliance of the products produced. This level of compliance is accomplished by the Manufacturer's configuration management and quality control processes. The EAC's Quality Monitoring Program, as outlined in this chapter, however, provides an additional layer of quality control by allowing the EAC to perform manufacturing site reviews, carry out fielded system reviews, and gather information on voting system anomalies from election officials. These additional tools help ensure that voting systems continue to meet the requirements of EAC's voting system standards as the systems are manufactured, delivered, and used in Federal elections. These aspects of the program enable the EAC to independently monitor the continued compliance of fielded voting systems.

8.2. Purpose. The purpose of the Quality Monitoring Program is to ensure that EAC-certified voting systems are identical to those fielded in election jurisdictions. This level of quality control is accomplished primarily by identifying (1) potential quality problems in manufacturing, (2) uncertified voting system configurations, and (3) field performance issues with certified systems.

8.3. Manufacturer's Quality Control. EAC's Quality Monitoring Program is not a substitute for the Manufacturer's quality control program. As stated in Chapter 2 of this Manual, all Manufacturers must have an acceptable quality control program in place before they may be registered. The EAC's program serves as an independent and complementary process of quality control that works in tandem with the Manufacturer's efforts.

8.4. Quality Monitoring Methodology. This chapter provides the EAC with three primary tools for assessing the level of effectiveness of the certification process and the compliance of fielded voting systems. These tools include (1) manufacturing site reviews, (2) fielded system reviews, and (3) a means for receiving anomaly reports from the field.

8.5. Manufacturing Site Review. Facilities that produce certified voting systems will be reviewed periodically, at the discretion of the EAC, to verify that the system being manufactured, shipped, and sold is the same as the sample submitted for certification testing. All registered Manufacturers must cooperate with such audits as a condition of program participation.

8.5.1. *Notice.* The site review may be scheduled or unscheduled, at the discretion of the EAC. Unscheduled reviews will be performed with at least 24 hours notice. Scheduling and notice of site reviews will be coordinated with and provided to both the manufacturing facility's representative and the Manufacturer's representative.

8.5.2. *Frequency.* At a minimum, at least one manufacturing facility of a registered Manufacturer shall be subject to a site review at least once every 4 years.

8.5.3. *The Review.* The production facility and production test records must be made available for review. When requested, production schedules must be provided to the EAC. Production or production testing may be witnessed by EAC representatives. If equipment is not being produced during the inspection, the review may be limited to production records. During the inspection, the Manufacturer must make available to the EAC representative the Manufacturer's quality manual and other documentation sufficient to enable the inspector to evaluate the following factors of the facility's production:

8.5.3.1. Manufacturing quality controls.

8.5.3.2. Final inspection and testing.

8.5.3.3. History of deficiencies or anomalies and corrective actions taken.

8.5.3.4. Equipment calibration and maintenance.

8.5.3.5. Corrective action program.

8.5.3.6. Policies on product labeling and the application of the EAC mark of certification.

8.5.4. *Exit Briefing.* Site reviewers will provide the manufacturing facility representative a verbal exit briefing regarding the preliminary observations of the review.

8.5.5. *Written Report.* A written report documenting the review will be drafted by the EAC representative and provided to the Manufacturer. The report will detail the findings of the review and identify actions that are required to correct any deficiencies.

8.6. Fielded System Review and Testing. Upon invitation or with the permission of a State or local election authority, the EAC may, at its discretion, conduct a review of fielded voting systems. Such reviews will be done to ensure that a fielded system is in the same configuration as that certified by the EAC and that it has the proper mark of certification. This review may include the testing of a fielded system, if deemed necessary. Any anomalies found during this review and testing will be provided to the election jurisdiction and the Manufacturer.

8.7. Field Anomaly Reporting. As another means of gathering field data, the EAC will collect information from election officials who field EAC-certified voting systems. Information on actual voting system field performance is a basic means for assessing the effectiveness of the Certification Program and the manufacturing quality and version control. The EAC will provide a mechanism for election officials to provide real-world input on voting system anomalIes.

8.7.1. *Anomaly Report.* Election officials may use the Voting System Anomaly Reporting Form to report voting system anomalies to the EAC. The form and instructions for its completion are available as Appendix C in this Manual or on the EAC Web site, *http://www.eac.gov.* The form may be filed with the EAC on line, by mail or by facsimile. Use of the form is required.

8.7.2. *Who May Report?* State or local election officials who have experienced voting system anomalies in their jurisdiction may file anomaly reports. The individuals reporting must identify themselves and have firsthand knowledge of or official responsibility over the anomaly being reported. Anonymous or hearsay reporting will not be accepted.

8.7.3. *What Is Reported?* Election officials shall report voting system anomalies. An anomaly is defined as an irregular or inconsistent action or response from the voting system or system component resulting in some disruption to the election process. Incidents resulting from administrator error or procedural deficiencies are not considered anomalies for purposes of this chapter. The report must include the following information:

8.7.3.1. The official's name, title, contact information, and jurisdiction.

8.7.3.2. A description of the voting system at issue.

8.7.3.3. The date and location of the reported occurrence.

8.7.3.4. The type of election.

8.7.3.5. A description of the anomaly witnessed.

8.7.4. *Distribution of Credible Reports.* Credible reports will be distributed to State and local election jurisdictions who field similar systems, the Manufacturer of the voting system at issue, and the VSTLs. Reports are reviewed by EAC staff in coordination with relevant State officials. Credible reports:

8.7.4.1. Meet the definition of anomaly under Section 8.7.3,

8.7.4.2. Constitute a complete report per the requirements of Sections 8.7.3.1 through 8.7.3.5,

8.7.4.3. Have had alleged facts confirmed by contacting filer and/or others present at the time of the incident, and

8.7.4.4. Have been verified by the relevant State's chief election official.

8.8. Use of Quality Monitoring Information. Ultimately, the information the EAC gathers from manufacturing site reviews, fielded system reviews, and field anomaly reports will be used to improve the program and ensure the quality of voting systems. The Quality Monitoring Program is not designed to be punitive but to be focused on improving the process. Information gathered will be used to accomplish the following:

8.8.1. Identify areas for improvement in the EAC Testing and Certification Program.

8.8.2. Improve manufacturing quality and change control processes.

8.8.3. Increase voter confidence in voting technology.

8.8.4. Inform Manufacturers, election officials, and the EAC of issues associated with voting systems in a real-world environment.

8.8.5. Share information among jurisdictions that use similar voting systems.

8.8.6. Resolve problems associated with voting technology or manufacturing in a timely manner by involving Manufacturers, election officials, and the EAC.

8.8.7. Provide feedback to the EAC and the Technical Guidelines Development Committee (TGDC) regarding issues that may need to be addressed through a revision to the Voluntary Voting System Guidelines.

8.8.8. Initiate an investigation when information suggests that Decertification is warranted (see Chapter 7).

9. Requests for Interpretations

9.1. Overview. A Request for Interpretation is a means by which a registered Manufacturer or VSTL may seek clarification on a specific EAC voting system standard (VVSG or VSS). An Interpretation is a clarification of the voting system standards and guidance on how to properly evaluate conformance to it. Suggestions or requests for modifications to the standards are provided by other processes. This chapter outlines the policy, requirements, and procedures for submitting a Request for Interpretation.

9.2. Policy. Registered Manufacturers or VSTLs may request that the EAC provide a definitive Interpretation of EAC-accepted voting system standards (VVSG or VSS) when, in the course of developing or testing a voting system, facts arise that make the meaning of a particular standard ambiguous or unclear. The EAC may self-initiate such a request when its agents identify a need for interpretation within the program. An Interpretation issued by the EAC will serve to clarify what a given standard requires and how to properly evaluate compliance. Ultimately, an Interpretation does not amend voting system standards, but serves only to clarify existing standards.

9.3. Requirements for Submitting a Request for Interpretation. An EAC Interpretation is limited in scope. The purpose of the Interpretation process is to provide Manufacturers or VSTLs who are in the process of developing or testing a voting system a means for resolving the meaning of a voting system standard in light of a specific voting system technology without having to present a finished product to EAC for certification. To submit a Request for Interpretation, one must (1) be a proper requester, (2) request interpretation of an applicable voting system standard, (3) present an actual controversy, and (4) seek clarification on a matter of unsettled ambiguity.

9.3.1. *Proper Requestor.* A Request for Interpretation may be submitted only by a registered Manufacturer or a VSTL. Requests for Interpretation will not be accepted from any other parties.

9.3.2. *Applicable Standard.* A Request for Interpretation is limited to queries on EAC voting system standards (i.e., VVSG or VSS). Moreover, a Manufacturer or VSTL may submit a Request for Interpretation only on a version of EAC voting system standards to which the EAC currently offers certification.

9.3.3. *Existing Factual Controversy.* To submit a Request for Interpretation, a Manufacturer or VSTL must present a question relative to a specific voting system or technology proposed for use in a voting system. A Request for Interpretation on hypothetical issues will not be addressed by the EAC. To submit a Request for Interpretation, the need for clarification must have arisen from the development or testing of a voting system. A factual controversy exists when an attempt to apply a specific section of the VVSG or VSS to a specific system or piece of technology creates ambiguity.

9.3.4. *Unsettled, Ambiguous Matter.* Requests for Interpretation must involve actual controversies that have not been previously settled. This requirement mandates that interpretations contain actual ambiguities not previously clarified.

9.3.4.1. Actual Ambiguity. A proper Request for Interpretation must contain an actual ambiguity. The interpretation process is not a means for challenging a clear EAC voting system standard. Recommended changes to voting system standards are welcome and may be forwarded to the EAC, but they are not part of this program. An ambiguity arises (in applying a voting system standard to a specific technology) when one of the following occurs:

9.3.4.1.1. The language of the standard is unclear on its face.

9.3.4.1.2. One section of the standard seems to contradict another, relevant section.

9.3.4.1.3. The language of the standard, though clear on its face, lacks sufficient detail or breadth to determine its proper application to a particular technology.

9.3.4.1.4. The language of a particular standard, when applied to a specific technology, clearly conflicts with the established purpose or intent of the standard.

9.3.4.1.5. The language of the standard is clear, but the proper means to assess compliance is unclear.

9.3.4.2. Not Previously Clarified. The EAC will not accept a Request for Interpretation when the issue has previously been clarified.

9.4. Procedure for Submitting a Request for Interpretation. A Request for Interpretation shall be made in writing to the Program Director. All requests should be complete and as detailed as possible because Interpretations issued by the EAC are based on, and limited to, the facts presented. Failure to provide complete information may result in an Interpretation that is off point and ultimately immaterial to the issue at hand. The following steps must be taken when writing a Request for Interpretation:

9.4.1. *Establish Standing To Make the Request.* To make a request, one must meet the requirements identified in Section 9.3 above. Thus, the written request must provide sufficient information for the Program Director to conclude that the requestor is (1) a proper requester, (2) requesting an Interpretation of an applicable voting system standard, (3) presenting an actual factual controversy, and (4) seeking clarification on a matter of unsettled ambiguity.

9.4.2. *Identify the EAC Voting System Standard To Be Clarified.* The request must identify the specific standard or standards to which the requestor seeks clarification. The request must state the version of the voting system standards at issue (if applicable) and quote and correctly cite the applicable standards.

9.4.3. *State the Facts Giving Rise to the Ambiguity.* The request must provide the facts associated with the voting system technology that gave rise to the ambiguity in the identified standard. The requestor must be careful to provide all necessary information in a clear, concise manner. Any Interpretation issued by the EAC will be based on the facts provided.

9.4.4. *Identify the Ambiguity.* The request must identify the ambiguity it seeks to resolve. The ambiguity shall be identified by stating a concise question that meets the following requirements:

9.4.4.1. Shall be clearly stated.

9.4.4.2. Shall be related to and reference the voting system standard and voting system technology information provided.

9.4.4.3. Shall be limited to a single issue. Each question or issue arising from an ambiguous standard must be stated separately. Compound questions are unacceptable. If multiple issues exist, they should be presented as individual, numbered questions.

9.4.4.4. Shall be stated in a way that can ultimately be answered yes or no.

9.4.5. *Provide a Proposed Interpretation.* A Request for Interpretation should propose an answer to the question posed. The answer should interpret the voting system standard in the context of the facts presented. It should also provide the basis and reasoning behind the proposal.

9.5. EAC Action on a Request for Interpretation. Upon receipt of a Request for Interpretation, the EAC shall take the following action:

9.5.1. *Review the Request.* The Program Director shall review the request to ensure it is complete, is clear, and meets the requirements of Section 9.3. Upon review, the Program Director may take the following action:

9.5.1.1. Request Clarification. If the Request for Interpretation is incomplete or additional information is otherwise required, the Program Director may request that the Manufacturer or VSTL clarify its Request for Interpretation and identify any additional information required.

9.5.1.2. Reject the Request for Interpretation. If the Request for Interpretation does not meet the requirements of Section 9.3, the Program Director may reject it. Such rejection must be provided in writing to the Manufacturer or VSTL and must state the basis for the rejection.

9.5.1.3. Notify Acceptance of the Request. If the Request for Interpretation is acceptable, the Program Director will notify the Manufacturer or VSTL in writing and provide

it with an estimated date of completion. A Request for Interpretation may be accepted in whole or in part. A notice of acceptance shall state the issues accepted for interpretation.

9.5.2. *Consideration of the Request.* After a Request for Interpretation has been accepted, the matter shall be investigated and researched. Such action may require the EAC to employ technical experts. It may also require the EAC to request additional information from the Manufacturer or VSTL. The Manufacturer or VSTL shall respond promptly to such requests.

9.5.3. *Interpretation.* The Decision Authority shall be responsible for making determinations on a Request for Interpretation. After this determination has been made, a written Interpretation shall be sent to the Manufacturer or VSTL. The following actions are necessary to prepare this written Interpretation:

9.5.3.1. State the question or questions investigated.

9.5.3.2. Outline the relevant facts that served as the basis of the Interpretation.

9.5.3.3. Identify the voting system standards interpreted.

9.5.3.4. State the conclusion reached.

9.5.3.5. Inform the Manufacturer or VSTL of the effect of an Interpretation (see Section 9.6).

9.6. Effect of Interpretation. Interpretations are fact specific and case specific. They are not tools of policy, but specific, fact-based guidance useful for resolving a particular problem. Ultimately, an Interpretation is determinative and conclusive only with regard to the case presented. Nevertheless, Interpretations do have some value as precedent. Interpretations published by the EAC shall serve as reliable/guidance and authority over identical or similar questions of interpretation. These Interpretations will help users understand and apply the provisions of EAC voting system standards.

9.7. Library of Interpretations. To better serve Manufacturers, VSTLs, and those interested in the EAC voting system standards, the Program Director shall publish EAC Interpretations. All proprietary information contained in an Interpretation will be redacted before publication consistent with Chapter 10 of this Manual. The library of published opinions is posted on the EAC Web site: *http://www.eac.gov*.

10. Release of Certification Program Information

10.1. Overview. Manufacturers participating in the Certification Program will be required to provide the EAC a variety of documents. In general, these documents will be releasable to the public. Moreover, in many cases, the information provided will be affirmatively published by the EAC. In limited cases, however, documents may not be released if they include trade secrets, confidential commercial information, or personal information. While the EAC is ultimately responsible for determining which documents Federal law protects from release, Manufacturers must identify the information they believe is protected and ultimately provide substantiation and a legal basis for withholding. This chapter discusses EAC's general policy on the release of information and provides Manufacturers with standards, procedures, and requirements for identifying documents as trade secrets or confidential commercial information.

10.2. EAC Policy on the Release of Certification Program Information. The EAC seeks to make its Voting System Testing and Certification Program as transparent as possible. The agency believes that such action benefits the program by increasing public confidence in the process and creating a more informed and involved public. As such, it is the policy of the EAC to make all documents, or severable portions thereof, available to the public consistent with Federal law (e.g. Freedom of Information Act (FOIA) and the Trade Secrets Act).

10.2.1. *Requests for information.* As in any Federal program, members of the public may request access to Certification Program documents under FOIA (5 U.S.C. § 552). The EAC will promptly process such requests per the requirements of that Act.

10.2.2. *Publication of documents.* Beyond the requirements of FOIA, the EAC intends to affirmatively publish program documents (or portions of documents) it believes will be of interest to the public. This publication will be accomplished through the use of the EAC Web site (*http://www.eac.gov*). The published documents will cover the full spectrum of the program, including information pertaining to:

10.2.2.1. Registered Manufacturers;

10.2.2.2. VSTL test plans;

10.2.2.3. VSTL test reports;

10.2.2.4. Agency decisions;

10.2.2.5. Denials of Certification;

10.2.2.6. Issuance of Certifications;

10.2.2.7. Information on a certified voting system's operation, components, features or capabilities;

10.2.2.8. Appeals;

10.2.2.9. Reports of investigation and Notice of Non-compliance;

10.2.2.10. Decertification actions;

10.2.2.11. Manufacturing facility review reports;

10.2.2.12. Official Interpretations (VVSG or VSS); and

10.2.2.13. Other topics as determined by the EAC.

10.2.3. *Trade Secret and Confidential Commercial Information.* Federal law places a number of restrictions on a Federal agency's authority to release information to the public. Two such restrictions are particularly relevant to the Certification program: (1) trade secrets information and (2) privileged or confidential commercial information. Both types of information are explicitly prohibited from release by the FOIA and the Trade Secrets Act (18 U.S.C. 1905).

10.3. Trade Secrets. A trade secret is a secret, commercially valuable plan, process, or device that is used for the making or processing of a product and that is the end result of either innovation or substantial effort. It relates to the productive process itself, describing how a product is made. It does not relate to information describing end product capabilities, features, or performance.

10.3.1. The following examples illustrate productive processes that may be trade secrets:

10.3.1.1. Plans, schematics, and other drawings useful in production.

10.3.1.2. Specifications of materials used in production.

10.3.1.3. Voting system source code used to develop or manufacture software where release would reveal actual programming.

10.3.1.4. Technical descriptions of manufacturing processes and other secret information relating directly to the production process.

10.3.2. The following examples are likely not trade secrets:

10.3.2.1. Information pertaining to a finished product's capabilities or features.

10.3.2.2. Information pertaining to a finished product's performance.

10.3.2.3. Information regarding product components that would not reveal any commercially valuable information regarding production.

10.4. Privileged or Confidential Commercial Information. Privileged or confidential commercial information is that information submitted by a Manufacturer that is commercial or financial in nature and privileged or confidential.

10.4.1. *Commercial or Financial Information.* The terms *commercial* and *financial* should be given their ordinary meanings. They include records in which a submitting Manufacturer has any *commercial interest.*

10.4.2. *Privileged or Confidential Information.* Commercial or financial information is privileged or confidential if its disclosure would likely cause substantial harm to the competitive position of the submitter. The concept of harm to one's competitive position focuses on harm flowing from a competitor's affirmative use of the proprietary information. It does not include incidental harm associated with upset customers or employees.

10.5. EAC's Responsibilities. The EAC is ultimately responsible for determining whether or not a document (in whole or in part) may be released pursuant to Federal law. In doing so, however, the EAC will require information and input from the Manufacturer submitting the documents. This requirement is essential for the EAC to identify, track, and make determinations on the large volume of documentation it receives. The EAC has the following responsibilities:

10.5.1. *Managing Documentation and Information.* The EAC will control the documentation it receives by ensuring that documents are secure and released to third parties only after the appropriate review and determination.

10.5.2. *Contacting Manufacturer on Proposed Release of Potentially Protected Documents.* In the event a member of the public submits a FOIA request for documents provided by a Manufacturer or the EAC otherwise proposes the release of such documents, the EAC will take the following actions:

10.5.2.1. Review the documents to determine if they are potentially protected from release as trade secrets or confidential commercial information. The documents at issue may have been previously identified as protected by the Manufacturer when

submitted (see Section 10.7.1 below) or identified by the EAC on review.

10.5.2.2. Grant the submitting Manufacturer an opportunity to provide input. In the event the information has been identified as potentially protected from release as a trade secret or confidential commercial information, the EAC will notify the submitter and allow it an opportunity to submit its position on the issue prior to release of the information. The submitter shall respond consistent with Section 10.7.1 below.

10.5.3. *Final Determination on Release.* After providing the submitter of the information an opportunity to be heard, the EAC will make a final decision on release. The EAC will inform the submitter of this decision.

10.6. Manufacturer's Responsibilities. Although the EAC is ultimately responsible for determining if a document, or any portion thereof, is protected from release as a trade secret or confidential commercial information, the Manufacturer shall be responsible for identifying documents, or portions of documents, it believes warrant such protection. Moreover, the Manufacturer will be responsible for providing the legal basis and substantiation for its determination regarding the withholding of a document. This responsibility arises in two situations: (1) upon the initial submission of information, and (2) upon notification by the EAC that it is considering the release of potentially protected information.

10.6.1. *Initial Submission of Information.* When a Manufacturer is submitting documents to the EAC as required by the Certification Program, it is responsible for identifying any document or portion of a document that it believes is protected from release by Federal law. Manufacturers shall identify protected information by taking the following action:

10.6.1.1. Submitting a Notice of Protected Information. This notice shall identify the document, document page, or portion of a page that the Manufacturer believes should be protected from release. This identification must be done with specificity. For each piece of information identified, the Manufacturer must state the legal basis for its protected status.

10.6.1.1.1. Cite the applicable law that exempts the information from release.

10.6.1.1.2. Clearly discuss why that legal authority applies and why the document must be protected from release.

10.6.1.1.3. If necessary, provide additional documentation or information. For example, if the Manufacturer claims a document contains confidential commercial information, it would also have to provide evidence and analysis of the competitive harm that would result upon release.

10.6.1.2. Label Submissions. Label all submissions identified in the notice as ''Proprietary Commercial Information.'' Label only those submissions identified as protected. Attempts to indiscriminately label all materials as proprietary will render the markings moot.

10.6.2. *Notification of Potential Release.* In the event a Manufacturer is notified that the EAC is considering the release of information that may be protected, the Manufacturer shall take the following action:

10.6.2.1. Respond to the notice within 15 calendar days. If additional time is needed, the Manufacturer must promptly notify the Program Director. Requests for additional time will be granted only for good cause and must be made before the 15-day deadline. Manufacturers that do not respond in a timely manner will be viewed as not objecting to release.

10.6.2.2. Clearly state one of the following in the response:

10.6.2.2.1. There is no objection to release, or

10.6.2.2.2. The Manufacturer objects to release. In this case, the response must clearly state which portions of the document the Manufacturer believes should be protected from release. The Manufacturer shall follow the procedures discussed in Section 10.7.1 above.

10.7. Personal Information. Certain personal information is protected from release under FOIA and the Privacy Act (5 U.S.C. 552a). This information includes private information about a person that, if released, would cause the individual embarrassment or constitute an unwarranted invasion of personal privacy. Generally, the EAC will not require the submission of private information about individuals. The incidental submission of such information should be avoided. If a Manufacturer believes it is required to submit such information, it should contact the Program Director. If the information will be submitted, it must be properly identified. Examples of such information include the following:

10.7.1. Social Security Number.

10.7.2. Bank account numbers.

10.7.3. Home address.

10.7.4. Home phone number.

BILLING CODE 6820–KF–M

Appendix A

Manufacturer Registration Application Form

Available in electronic format at www.eac.gov

Appendix B

Application for Voting System Testing Form

Available in electronic format at www.eac.gov

Appendix C

Voting System Anomaly Reporting Form

Available in electronic format at www.eac.gov

[FR Doc. 06–9751 Filed 12–19–06; 8:45 am]
BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 31, 2007, 2 p.m.–8:30 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or e-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

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

Tentative Agenda:

2 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Christina Houston.
Establishment of a Quorum.
Welcome and Introductions by Chair, J.D. Campbell.
Approval of Agenda.
Approval of Minutes of September 27, 2006, Board Meeting.
Approval of Minutes of November 29, 2006, Board Meeting.
2:15 p.m. Board Business/Reports.
Old Business, Chair, J.D. Campbell.
Report from Chair, J.D. Campbell.
Report from Department of Energy (DOE), Christina Houston.
Report from Executive Director, Menice Santistevan.
Other Matters, Board Members.
New Business.
3 p.m. Break.
3:15 p.m. Committee Business/Reports.
A. Environmental Monitoring, Surveillance and Remediation Committee—Introduction of Recommendations, Pam Henline.
B. Waste Management Committee—Introduction of Recommendations, Committee Chair.
C. Introduction of Other Recommendations to DOE, J.D. Campbell.
D. Ad Hoc Committee on Bylaws, Presentation of Proposed Amendments for First Reading, Donald Jordan.
4:15 p.m. Reports from Liaison Members.
U.S. Environmental Protection Agency (EPA), Rich Mayer.
DOE, George Rael.
Los Alamos National Security (LANS), Andy Phelps.
New Mexico Environment Department (NMED), James Bearzi.
5 p.m. Dinner Break.
6 p.m. Public Comment.
6:15 p.m. Consideration and Action on Recommendations to DOE.
7 p.m. Presentation on Environmental Management at Los Alamos National Laboratory.
8 p.m. Round Robin on Board Meeting and Presentations, Board Members.
8:15 p.m. Recap of Meeting: Issuance of Press Releases, Editorials, etc., J.D. Campbell.
8:30 p.m. Adjourn, Christina Houston.

This agenda is subject to change at least one day in advance of the meeting.

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

Minutes: Minutes will be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Santistevan at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on December 14, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–21722 Filed 12–19–06; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting.

SUMMARY: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC), established under the Energy Policy Act of 2005 (EPACT), Pub. L. 109–190, will hold its next meeting on January 9–10, 2007. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *HTAC.Committee@ee.doe.gov* at least 5 business days before the meeting.

DATES: The meeting will begin on January 9, 2007, at 9 a.m. and will conclude at 11:45 a.m. on January 10, 2007.

ADDRESSES: U.S. Department of Energy, Room 1E–245, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: *HTAC.Committee@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice, information, and recommendations to the Secretary on the program authorized by Title VIII, Hydrogen, of EPACT.

Tentative Agenda (Subject to change; agenda updates will be posted on *hydrogen.energy.gov*). The following items will be covered on the agenda:

- Review and approval of minutes from conference call on November 17, 2006.
- Review of HTAC's Deliverables and Milestones.
- Transportation White Paper prepared by an ad-hoc group of multiple companies.
- Portable and Stationary Applications White Paper prepared by HTAC members.
- Presentation on DOE Infrastructure Activities.
- Transitioning to a hydrogen economy.
- DOE Hydrogen Posture Plan.
- HTAC Subcommittees.
- Public Comment Period (10:15–11:15 on Wednesday January 10, 2007).

Public Participation: In keeping with procedures, members of the public are

welcome to observe the business of HTAC and to make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *HTAC.Committee@ee.doe.gov* at least 5 business days before the meeting. (Please indicate if you will be attending the meeting both days or just one day.) Members of the public will be heard in the order in which they sign up for the Public Comment Period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting (electronic and hard copy).

Minutes: The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room; Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 15, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–21753 Filed 12–19–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Hydrolysis of Sodium Borohydride for On-Board Hydrogen Storage Go/No-Go Decision

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of request for technical input to go/no-go decision.

SUMMARY: The Department of Energy (the Department or DOE) Hydrogen, Fuel Cells and Infrastructure Technologies Program, is requesting position papers or other technical documentation regarding hydrolysis of sodium borohydride for on-board vehicular hydrogen storage applications by April 30, 2007. Information regarding regeneration of the spent fuel resulting from hydrolysis of sodium borohydride may also be submitted. This information will be used as part of DOE's go/no-go process in determining the future of DOE's program for applied research and development of hydrolysis of sodium borohydride for on-board hydrogen storage, including regeneration of the spent fuel.

DATES: Written position papers, articles or other technical documentation for consideration by the Department regarding this decision are welcome. Documents may be submitted via e-mail and must be received by April 30, 2007.

ADDRESSES: Please submit all documents to *h2storage@go.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Grace Ordaz, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–2H, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Phone: (202) 586–8350, e-mail: *grace.ordaz@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The mission of the DOE's Hydrogen Program is to research, develop and validate fuel cell and hydrogen production, delivery, and storage technologies so that hydrogen from diverse domestic resources can be used in a clean, safe, reliable and affordable manner in fuel cell vehicles, electric power generation and combined heat and power applications. A critical requirement for enabling hydrogen fuel cell vehicles to achieve mass market penetration is the development of on-board hydrogen storage systems with enough capacity to meet driving range expectations (more than 300 miles in the United States), while meeting a number of requirements such as weight, volume and cost. Detailed technical targets developed by DOE, with input through the FreedomCAR and Fuel Partnership, are available at: *http://www1.eere.energy.gov/hydrogenandfuelcells/mypp/pdfs/storage.pdf.*

To address the critical requirement of on-board hydrogen storage, the Program has established a ''National Hydrogen Storage Project'' including three Centers of Excellence and independent projects covering a diverse portfolio of hydrogen storage R&D. Each Center of Excellence is focusing on a class of storage materials—metal (reversible) hydrides, chemical hydrides (non-reversible), and carbon (and other hydrogen adsorbent) materials. Each center has university, industry and national lab partners pursuing and leveraging their specific expertise in different areas. The Program has also expanded basic science efforts and coordination between DOE's Office of Energy Efficiency and Renewable Energy and Office of Science (see *http://www.hydrogen.energy.gov*).

On-board hydrogen storage systems must be developed that are safe, low cost and have high volumetric and gravimetric energy capacities in addition to meeting durability and operability requirements such as hydrogen charging and discharging rates. Periodic assessments and decision points on specific material technologies are included within the Hydrogen Storage sub-Program to meet the required targets within the Program timeframe.

Within the current storage portfolio, a number of promising storage materials are being studied which have the potential for hydrogen storage capacities comparable to or greater than initially envisioned. In the material class of chemical hydrides, sodium borohydride has been shown to provide an adequate source of hydrogen upon hydrolysis of the material. However, since the hydrolysis reaction is not reversible on board the vehicle, processes for efficient off-board regeneration of the spent fuel, sodium borate, must be developed for the hydrolysis of sodium borohydride to be a viable on-board storage option. The DOE Hydrogen Program initiated research to develop efficient regeneration processes for sodium borohydride in 2003. Researchers supported by the DOE Program and other entities have made progress in improving the efficiency of the regeneration process over that of the current industrial process through which sodium borohydride is produced. However, the overall efficiency of the regeneration process remains low when compared to the DOE goal of 60%. In 2005, DOE increased the level of effort for the efficient regeneration of spent fuel from hydrolysis of sodium borohydride by including this activity within the scope of DOE's Chemical Hydrogen Storage Center of Excellence. Results from these DOE R&D activities will also be used in DOE's go/no-go process in determining the future of applied research and development of hydrolysis of sodium borohydride for on-board vehicular hydrogen storage and of regeneration processes for the spent fuel.

Scope Of Decision Process: The DOE will make a decision regarding the future of its program for applied research and development of hydrolysis of sodium borohydride for on-board hydrogen storage by the end of September 2007. DOE will review the current state of activities related to hydrolysis of sodium borohydride, including the regeneration of spent fuel, and base its go/no-go decision on whether the following 2007 technical targets have been met:

(1) *System Gravimetric Capacity:* Usable, specific-energy from H_2 (net useful energy/max system mass) = 1.5 kWh/kg

(2) *System Volumetric Capacity:* Usable energy density from H_2 (net useful energy/max system volume) = 1.2 kWh/L

(3) Storage system cost = $6/kWh net

DOE will also consider the likelihood that sodium borohydride will meet the following 2010 technical targets:

(4) *System Gravimetric Capacity:* Usable, specific-energy from H_2 (net useful energy/max system mass) = 2.0 kWh/kg

(5) *System Volumetric Capacity:* Usable energy density from H_2 (net useful energy/max system volume) = 1.5 kWh/L

(6) Storage system cost = $4/kWh net

(7) Fuel cost (regeneration) = $2–3 per gallon of gasoline equivalent at the pump.

Position papers or other technical documents relevant to the go/no-go decision will be accepted by DOE for consideration in this decision. Position papers are limited to 10 pages maximum, and should contain a cover page with a point of contact, company name, address and email address. The cover page will not be counted in the 10 page limitation. Technical documents, such as published journal articles or preprints, are not restricted to the page limit. Position papers and other technical documents will be made available to the public and should not contain any proprietary information.

For more information about the DOE Hydrogen Program and related on-board hydrogen storage activities visit the Program's Web site at *http://www.hydrogen.energy.gov* and *http://www.eere.energy.gov/hydrogenandfuelcells.*

Issued in Golden, CO on December 12, 2006.

Jerry L. Zimmer,

Procurement Director, Golden Field Office.

[FR Doc. E6–21724 Filed 12–19–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the form OE–781R, ''Report of International Electrical Export/Import Data'' to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by January 19, 2007. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Sarah Garman, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Sarah_P._Garman@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. OE–781R, ''Report of International Electrical Export/Import Data''.

2. Office of Electricity Delivery and Energy Reliability (OE).

3. OMB Number 1901–0296.

4. Extension (Three-year).

5. Mandatory.

6. OE–781R collects electrical import/export data from entities authorized to export electric energy, and from entities holding Presidential Permits to construct, connect, operate, or maintain facilities for the transmission of electric energy at an international boundary as required by 10 CFR 205.308 and 205.325. The data are used by Fossil Energy to monitor the levels of electricity imports and exports and are also used by EIA for publication.

7. Holders of Presidential Permits are required to report.

8. 705 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, December 12, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–21721 Filed 12–19–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–102–000]

American Electric Power Service Corporation; Notice of Filing

December 14, 2006.

Take notice that on December 8, 2006, American Electric Power Service Corporation filed a supplement to its petition of declaratory order requesting the Commission to find that the implementation of a proposed business organization, as described in the Petition and being implemented in accordance with the restructuring of the electric utility industry in ERCOT, complies with the Codes of Conduct of AEP and CSW Power Marketing, Inc., on file with the Commission.

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

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

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

Comment Date: 5 p.m. Eastern Time on December 26, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21686 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–24–000]

Notice of Filing; City of Anaheim, CA

December 14, 2006.

Take notice that on December 8, 2006, the City of Anaheim, California tendered for filing its fourth annual revision to its Transmission Revenue Balancing Account Adjustment.

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

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

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

Comment Date: 5 p.m. Eastern Time on January 4, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21690 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–23–000]

Notice of Filing; City of Banning, CA

December 14, 2006.

Take notice that on December 5, 2006, the City of Banning, California tendered for filing its fourth annual revision to its Transmission Revenue Balancing Account Adjustment.

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

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

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

Comment Date: 5 p.m. Eastern Time on January 4, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21689 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–103–000]

Florida Gas Transmission Company, LLC; Notice of Tariff Filing

December 14, 2006.

Take notice that on December 11, 2006, Florida Gas Transmission Company, LLC (FGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 245, to become effective January 10, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–21700 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–143–057]

Notice of Revenue Sharing Report November 2005–October 2006; Great Lakes Gas Transmission; Limited Partnership

December 14, 2006.

Take notice that on December 11, 2006, Great Lakes Gas Transmission Limited Partnership (Great Lakes) submitted its Interruptible/Overrun (I/O) Revenue Sharing Report pursuant to the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91–143–000, *et al.*

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

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

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

Comment Date: 5 p.m. Eastern Time on December 21, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21685 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–198–000]

Highland Energy, Inc.; Notice of Issuance of Order

December 14, 2006.

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

On December 14, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Highland should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 16, 2007.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–21694 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–125–000]

Keystone Energy Partners, LP; Notice of Issuance of Order

December 14, 2006.

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

On December 12, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Keystone Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 11, 2007.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–21692 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–100–000]

Koch Supply & Trading, LP; Notice of Issuance of Order

December 14, 2006.

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

On December 12, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by KS&T should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 11, 2007.

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

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of KS&T's issuance of securities or assumptions of liability.

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–21691 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–177–000]

NCSU Energy, Inc.; Notice of Issuance of Order

December 14, 2006.

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

On December 14, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by NCSU should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 16, 2007.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–21693 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–21–000]

Notice of Filing; New England Independent Transmission Company, LLC

December 14, 2006.

Take notice that on December 4, 2006, New England Independent Transmission Company, LLC (New England ITC) tendered for filing a Petition for Declaratory Order requesting findings regarding independence criteria and capabilities.

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

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

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

Comment Date: 5 p.m. Eastern Time on December 28, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21687 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–104–000]

Northern Natural Gas Company; Notice of Limited Waiver

December 14, 2006.

Take notice that on December 11, 2006, Northern Natural Gas Company (Northern) tendered for filing a petition for a limited waiver of its FERC Gas Tariff in order to allow Northern to resolve a prior-period imbalance trading error by retroactively adjusting imbalance levels for Alliant Energy and CenterPoint Energy Gas Services to reflect an imbalance trade which was agreed to but improperly communicated.

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

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

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

Comment Date: 5 p.m. Eastern Time December 21, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21701 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–105–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 14, 2006.

Take notice that on December 11, 2006, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of January 11, 2007:

Tenth Revised Sheet No. 135D.
Fourth Revised Sheet No. 142C.
Sixteenth Revised Sheet No. 144.

Northern states that it is filing the above referenced tariff sheets to add Enbridge-Pampa and CIG Garden City to the list of available storage points for receipt and delivery of storage services.

Northern further states that copies of the filing have been provided to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–21702 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–30–000]

Petal Gas Storage, L.L.C.; Notice of Application

December 14, 2006.

Take notice that on December 4, 2006, Petal Gas Storage, L.L.C (Petal), 1100 Louisiana Street, Houston, Texas, 77002, filed with the Federal Energy Regulatory Commission an abbreviated application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's regulations for authorization to convert two existing salt caverns into natural gas storage caverns in Forrest County, Mississippi. The proposal (referred to as the Petal Cavern Conversions Project), consists of: (1) altering the configuration of the caverns to allow for natural gas storage (one currently stores natural gas liquids and one currently stores brine) and (2) constructing pipeline facilities necessary to connect the converted caverns with the existing Petal natural gas storage operations. The cavern conversions would add a total of 4.45 Bcf of storage capacity to Petals system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application should be directed to Richard Porter, Petal Gas Storage, L.L.C, 1100 Louisiana Street, Houston, Texas, 77002, (telephone) (713) 381–2526, (fax) (713) 803–2534, *rporter@eprod.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on January 4, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21704 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–22–000]

Notice of Filing; City of Riverside, CA

December 14, 2006.

Take notice that on December 5, 2006, the City of Riverside, California tendered for filing its fourth annual revision to its Transmission Revenue Balancing Account Adjustment.

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

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

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

Comment Date: 5 p.m. Eastern Time on January 4, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21688 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–107–000]

Pepco Energy Services, Inc., Complainant v. Columbia Gas Transmission Corporation, Respondent; Notice of Complaint

December 14, 2006.

Take notice that on December 12, 2006, Pepco Energy Services, Inc.(Pepco) filed a formal complaint against Columbia Gas Transmission Corporation pursuant to sections 4 and 5 of the Natural Gas Act, and 18 CFR 385.206 and 385.212, alleging that Columbia's capacity auction held on November 8, 2006, was unjust and unreasonable and unduly discriminatory against Pepco. Pepco states that there were serious flaws in Columbia's Navigator system during the auction.

Pepco certifies that copies of the complaint were served on the contact for Columbia Gas Transmission Corporation and UGI Utilities, Inc.

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

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–21703 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–2–000]

Tesoro Refining and Marketing Company, Complainant v. SFPP, L.P., Respondent; Notice of Complaint

December 13, 2006.

Take notice that on December 12, 2006, Tesoro Refining and Marketing Company (Tesoro) filed a formal complaint against SFPP, L.P. pursuant to Rule 206 of Practice and Procedure of the Federal Energy Regulatory Commission; the Procedural Rules Applicable to Oil Pipeline Proceedings; 16 of the Interstate Commerce Act; and section 1803 of the Energy Policy Act of 1992.

Complainant alleges that SFPP's West Line and Calnev Line rates are unjust and unreasonable. Complainant requests that the Commission determine that the rates established by SFPP for the shipment of refined petroleum products are so substantially in excess of SFPP's actual costs as to be unjust and unreasonable; prescribe new rates that are just and reasonable for the shipment of refined petroleum products on SFPP's West Line and Calnev Line; determine that SFPP overcharged Tesoro for shipments of refined petroleum products on SFPP's West Line and Calnev Line from at least December 12, 2004 to the present, and is continuing to overcharge Tesoro for such shipments; order SFPP to pay refunds, reparations and damages, plus interest to Tesoro for shipments made by Tesoro on the West Line and Calnev Line from December 12, 2004; determine that section 1803 of the Energy Policy Act of 1992 does not prevent Tesoro from filing this Complaint or the Commission from ordering the relief requested above; award Tesoro its costs and attorneys fees in prosecuting this Complaint; grant Tesoro's Motion to Consolidate this Complaint with on-going Commission proceedings in Dockets Nos. OR03–5–000, OR04–3–000, OR05–4–000; and grant Tesoro such other, different or

additional relief as the Commission may determine to be appropriate.

Tesoro certifies that copies of the complaint were served on the contacts for SFPP as listed on the Commission's list of Corporate Officials.

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

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

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

Comment Date: 5 p.m. Eastern Time on January 11, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21695 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 13, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–34–000.

Applicants: Dogwood Energy LLC; MEP Pleasant Hill LLC

Description: Dogwood Energy LLC and MEP Pleasant Hill, LLC submit a joint application for approval of the transfer of jurisdictional facilities and existing generating facilities.

Filed Date: 12/08/2006.

Accession Number: 20061211–0067.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–19–000.

Applicants: High Prairie Wind Farm II, LLC.

Description: High Prairie Wind Farm II, LLC submits a notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/07/2006.

Accession Number: 20061207–5060.

Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–188–002; ER99–2774–015; ER03–956–011; ER07–191–002; ER07–189–002; ER07–190–002; ER00–826–008; ER00–828–008; ER98–421–019; ER98–4055–016; ER01–1337–011; ER02–177–012; ER03–1212–010; ER01–1820–010.

Applicants: Duke Energy Carolina, LLC; Duke Energy Trading and Marketing, L.L.C.; Duke Energy Marketing America, LLC; Duke Energy Ohio, Inc.; Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Brownsville Power I LLC; Caledonia Power I, L.L.C.; CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc.; Cinergy Power Investments, Inc.; St. Paul Cogeneration, LLC; Cinergy Operating Companies.

Description: Duke Energy Corp et al submit a notice of change in status re their authority to engage in wholesale sales of capacity, energy and ancillary services at market-based rate.

Filed Date: 12/11/2006.

Accession Number: 20061212–0108.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Docket Numbers: ER02–2330–045.

Applicants: ISO New England Inc..

Description: ISO New England Inc submits its seventeenth quarterly status report in compliance with FERC's 9/20/02 Order.

Filed Date: 12/11/2006.

Accession Number: 20061212–0114.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Docket Numbers: ER05–1497–004.

Applicants: Dearborn Industrial Generation, LLC.

Description: Dearborn Industrial Generation, LLC submits an Errata to its Redlined Comparison Tariff in its final compliance filing pursuant to the Commission's 10/25/06 order.

Filed Date: 12/11/2006.

Accession Number: 20061212–0117.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Docket Numbers: ER06–1543–001.

Applicants: Brush Cogeneration Partners.

Description: Brush Cogeneration Partners submits a compliance filing to remove Section 1(a) and additional references to ancillary services in Sections 1 and 2 of its current market-based rate tariff pursuant to the Commission's 11/30/06 order.

Filed Date: 12/11/2006.

Accession Number: 20061212–0109.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Docket Numbers: ER07–174–002.

Applicants: Osceola Windpower, LLC.

Description: Osceola Windpower, LLC submits an amendment to its Market-Based Tariff effective 1/2/07.

Filed Date: 12/08/2006.

Accession Number: 20061212–0101.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–312–000.

Applicants: Dogwood Energy LLC.

Description: Dogwood Energy LLC submits an Application for Market-Based authorization and Related Waivers and Pre-Approvals and also submits FERC Electric Tariff, Volume 1.

Filed Date: 12/08/2006.

Accession Number: 20061212–0106.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–313–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric submits an executed Letter of Agreement for RAS Interim Upgrade with the California Department of Water Resources—State Water Project, First Revised Rate Schedule No. 77.

Filed Date: 12/11/2006.

Accession Number: 20061212–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Docket Numbers: ER07–314–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an unexecuted revised Service Agreement for Network Integration Transmission Service with American Electric Power Service Corporation, Southwestern Electric Power Company and Mutual Energy SWEPCO L.P.

Filed Date: 12/11/2006.

Accession Number: 20061212–0116.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Docket Numbers: ER07–315–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed Interconnection Service Agreement with Beech Ridge Energy, LLC and Monongahela Power Company.

Filed Date: 12/11/2006.

Accession Number: 20061212–0107.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Docket Numbers: ER07–316–000.

Applicants: Avista Corporation.

Description: Avista Corporation submits revisions to its Open Access Transmission Tariff pursuant to order 676.

Filed Date: 12/11/2006.

Accession Number: 20061212–0113.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Docket Numbers: ER07–317–000.

Applicants: Allegheny Power.

Description: The Potomac Edison Co dba Allegheny Power submits a Letter Agreement with Old Dominion Electric Cooperative.

Filed Date: 12/11/2006.

Accession Number: 20061212–0110.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 02, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified Comment Date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21705 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–34–000]

Ozark Gas Transmission, LLC; Notice of Scoping Meetings for the Proposed Ozark Gas Transmission East End Expansion Project, LLC'S

December 14, 2006.

On December 4, 2006 the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Intent to Prepare an Environmental Impact Statement (EIS) For the Proposed East End Expansion Project and Request for Comments on Environmental Issues in the above-referenced docket. The Notice stated that public scoping meetings would be announced in a future Notice. Four public scoping meetings are now planned, and the dates, locations, and times are presented below:

January 8, 2007; 6 to 8 p.m., St. Mary Church Hall, 11 Kaufman Lane, Hattieville, AR 72063, Telephone: (501) 354–3206

January 9, 2007; 6 to 8 p.m., Carmichael Community Center, 801 S. Elm Street, Searcy, AR 72143, Telephone: (501) 279–1010

January 10, 2007; 6 to 8 p.m., Phillips College-Fine Arts Center, 1000 Campus Drive, Helena, AR, Telephone: (870) 816–1291

January 11, 2007: 6 to 8 p.m., Batesville Civic Center, 290 Civic Center Drive, Batesville, MS 38606, Telephone: (662) 563–1392

Additional Information

Additional information can be obtained about the project on Ozark Gas Transmission, LLC's Web site at: *http://www.latec.com/ozark.* Additional information about the project is also available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21699 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

December 14, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2145–077.

c. *Date Filed:* November 30, 2006.

d. *Applicant:* Public Utility District No. 1 of Chelan County, Washington.

e. *Name of Project:* The Rocky Reach Hydroelectric Project.

f. *Location:* The Rocky Reach Project is located on the Columbia River in the Town of Entiat, Chelan County, Washington. The proposed action would remove 40.35 acres from the project boundary within Daroga State Park, and would add 21.87 acres to the project near Chelan Falls.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Michelle Smith, Licensing and Compliance Manager; Public Utility District No. 1 of Chelan County, Washington; P.O. Box 1231; Wenatchee, WA 98807–1231; (509) 661–4180.

i. *FERC Contact:* Any questions on this notice should be addressed to Lesley Kordella at (202) 502–6406.

j. *Deadline for filing comments and or motions:* January 16, 2007.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2145–077) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Public Utility District No. 1 of Chelan County, Washington (licensee) requests Commission approval to remove 40.35 acres from the project boundary, which is currently part of Daroga State Park and the project's exhibit R. The licensee also requests 21.87 acres of land owned by Auvil Fruit Company, Inc. be incorporated into the project boundary. This land is located approximately 30 miles upstream from the project near Chelan Falls. The licensee consulted with Washington State Parks and Recreation Commission, Colville Confederated Tribes, and the Yakama Nation prior to submitting the application to the Commission.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21696 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

December 14, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 271–102.

c. *Date Filed:* November 28, 2006.

d. *Applicant:* Entergy Arkansas, Inc.

e. *Name of Project:* Carpenter-Remmel Hydroelectric Project.

f. *Location:* Ouachita River in Garland County, Arkansas. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Blake Hogue, Hydro Operations, Entergy Arkansas, Inc., 141 West County Line Road, Malvern, AR 72104; (501) 844–2197.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674.

j. *Deadline for filing comments and or motions:* January 16, 2007.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–271–102) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* Entergy Arkansas, Inc. is requesting Commission authorization for the construction of ten boat storage slips, four fueling slips, and a new four slip fuel dispenser to expand the existing Hot Springs Marina. The existing and expanded facilities would consist of a six-foot by 280-foot boardwalk, three multi-slip storage docks with a total of 56 slips, an off-season fueling pier, the existing boat ramp, and a four slip fuel dock for use during the peak season. The 56 slips consist of 42 existing slips, four previously approved (but not constructed slips), and the ten slip expansion. The expansion would result in a total of five fuel dispensers.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21697 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

December 14, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 7269–025.

c. *Date Filed:* October 25, 2006.

d. *Applicants:* James B. and Janet A. Boyd (transferor) and Dennis B. Logan (transferee).

e. *Name and Location of Project:* The Jim Boyd Project is located on the Umatilla River, near Hermiston, in Umatilla County, Oregon.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant Contacts:* For James B. and Janet A. Boyd and Dennis B. Logan: Mr. Dennis B. Logan, 77661 Paterson Ferry Rd., Irrigon, OR 97844.

h. *FERC Contact:* Etta L. Foster (202) 502–8769.

i. *Deadline for filing comments, protests, and motions to intervene:* January 16, 2007.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001 (a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–7269–025) on any comments, protests, or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants request approval, under section 8 of the Federal Power Act, of a transfer of license for the Jim Boyd Project No. 7269 from James B. and Janet A. Boyd to Dennis B. Logan.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the project number excluding the last three digits (P–7269) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filling comments, it will be assumed to

have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21698 Filed 12–19–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0201-FRL–8109–4]

Organic Arsenical Herbicides (MSMA, DSMA, CAMA, and Cacodylic Acid), Reregistration Eligibility Decision; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of August 9, 2006, concerning the availability of the reregistration eligibility decision for the organic arsenical herbicides MSMA, DSMA, DAMA, and cacodylic acid. EPA also issued notices in the Federal Register of October 4, 2006 announcing the extension of the comment period by 30 days and of October 27, 2006 announcing the extension of the comment period until December 13, 2006. This document is reopening the comment period an additional 30 days, from December 20, 2006, to January 19, 2007.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0201 must be received on or before January 19, 2007.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of August 9, 2006.

FOR FURTHER INFORMATION CONTACT: Lance Wormell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0523; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in **SUPPLEMENTARY INFORMATION** of the August 9, 2006 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document reopens the public comment period established in the **Federal Register** of August 9, 2006 (71 FR 45554) (FRL-8085–9). In that document, EPA announced the availability of the reregistration eligibility decision document for the organic arsenical herbicides MSMA, DSMA, DAMA, and cacodylic acid. EPA is hereby reopening the comment period, which ended on December 13, 2006, to January 19, 2007.

III. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. Further provisions are made to allow a public comment period. However, the Administrator may extend the comment period, if additional time for comment is requested. In this case, the Monomethyl Arsonic Acid (MAA) Research Tack Force has requested additional time to develop comments.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 13, 2006.

Debra Edwards,

Director, Special Review and Reregistration, Division, Office of Pesticide Programs

[FR Doc. E6–21610 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

EPA–HQ–OPP–2006–0946; FRL–8108–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by a registrant to voluntarily cancel a certain pesticide registration.

DATES: Unless a request is withdrawn by January 19, 2007, an order will be issued canceling this registration. The Agency will consider withdrawal requests postmarked no later than January 19, 2007. Comments must be received on or before January 19, 2007.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–

HQ–OPP–2006–0946, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Written withdrawal requests should be directed to the Attention of: Ann Sibold, Registration Division (7505P), at the address under **FOR FURTHER INFORMATION CONTCT**.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0946. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The Federal regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305–6502; e-mail address: *sibold.ann@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of an application from a registrant to cancel one pesticide product registered under section 3 or 24(c) of FIFRA. This registration is listed in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
69061–4	Davis Triple Pyrethrins Flea and Tick Shampoo	Pyrethrins, piperonyl butoxide, n-octyl bicycloheptene dicarboxamide and di-n-propyl isocinchomeronate

A request to waive the 180–day comment period has been received for the following registration: 69061–4. Therefore, the 30–day comment period will apply for this registration.

Unless a request is withdrawn by the registrant by January 19, 2007, an order will be issued canceling this registration. A person may submit comments to EPA as provided in **ADDRESSES** and Unit I.B. of the **SUPPLEMENTARY INFORMATION** above. However, because FIFRA section

6(f)(1)(A) allows a registrant to request cancellation of its pesticide registrations at any time, users or anyone else desiring retention of those pesticides listed in Table 1 may want to contact the applicable registrant in Table 2 directly during this period to request that the registrant retain the pesticide registration or to discuss the possibility of transferring the registration. A user seeking to apply for its own registration of that pesticide may submit comments requesting EPA not to cancel a registration until its ''me-too'' registration is granted.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
69061	Mr. Iain Weatherston, Technology Sciences Group, Inc. 4061 North 156th Drive, Goodyear, AZ 85338, Agent for Sivad & Manufacturing Packaging Inc. 541 Proctor Avenue, Scottsdale, GA 30079

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before January 19, 2007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 8, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–21604 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0936; FRL–8104–4]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before January 19, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and pesticide petition (PP) number, by one of the following methods. Refer to Unit II. for specific docket ID numbers for each pesticide petition.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to the assigned docket ID number for the pesticide petition. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The Federal regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number assigned to the pesticide petition.

PP number	Docket ID number
PP 0F6095	EPA–HQ–OPP–2006–0965
PP 2F2469	EPA–HQ–OPP–2006–0205
PP 6E7079	EPA–HQ–OPP–2006–0658
PP 6E7083	EPA–HQ–OPP–2006–0791
PP 6F7084	EPA–HQ–OPP–2006–0576
PP 6E7108	EPA–HQ–OPP–2006–0968
PP 6E7116	EPA–HQ–OPP–2006–0968
PP 6F7117	EPA–HQ–OPP–2006–0890
PP 9F6023	EPA–HQ–OPP–2006–0576
PP 9F5066	EPA–HQ–OPP–2006–0576

III. What Action is the Agency Taking?

EPA is printing a summary of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of the petitions included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at*http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number assigned to the pesticide

petition. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

A. Establishment of Tolerances

1. *PP 0F6095*. (Docket ID number EPA–HQ–OPP–2006–0965). Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the herbicide flufenacet (N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on the food commodities: Corn, sweet, forage at 0.4 parts per million (ppm); corn, sweet, kernel plus cob with husks removed at 0.05 ppm; corn, sweet, stover at 0.4 ppm; wheat, forage at 10.0 ppm; wheat, grain at 1.0 ppm; wheat, hay at 2.0 ppm; wheat, straw at 0.5 ppm; seed-grass, forage at 7.0 ppm; seed-grass, forage, regrowth at 0.1 ppm; seed-grass, hay, regrowth at 0.5 ppm. Gas chromatography/mass spectrometry with selected ion monitoring is used to measure and evaluate the chemical residue(s). Contact: Jim Tompkins; telephone number (703) 305–5697; e-mail address:*tompkins.jim@epa.gov*.

2. *PP 2F2469*. (Docket ID number EPA–HQ–OPP–2006–0205). Gowan Company, P.O. Box 5569, Yuma, AZ 85366, proposes to amend 40 CFR 180.479(a)(2) to establish tolerances for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino]carbonylaminosulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, in or on the raw agricultural commodities alfalfa, forage at 1.0 parts per million (ppm) and alfalfa, hay at 2.0 ppm. Gas chromatography (GC) with nitrogen-specific detection is used to measure and evaluate the chemical residues.

It is also proposed by EPA to correct the tolerance expression in 40 CFR 180.479(a)(1) to read ''Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino]carbonylaminosulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid, expressed as halosulfuron-methyl equivalents.'' Contact: Vickie Walters; telephone number: (703) 305–5704; e-mail address: *walters.vickie@epa.gov*.

3. *PP 6E7079*. (Docket ID number EPA–HQ–OPP–2006–0658). BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932, proposes to establish exemptions from the requirement of a tolerance for residues of the polymer of 2-ethyl-2-(hydroxymethy)-1,3 propanediol, oxirane, methyloxirane, 1,2 epoxyalkane; (1,2 epoxyalkane is either 1,2-epoxydodecane (CAS Registration No. 903890–89–1), 1,2 epoxyhexadecane (CAS Registration No. 903890–90–4) or 1,2 epoxyhexadecane (CAS Registration No. 893427–80–0) as inert ingredients in pesticide products. Because this petition is a request for an exemption from the requirement of tolerances without numerical limitations, no analytical methods are required. Contact: Bipin Gandhi; telephone number: (703) 308–8380,e-mail address: *gandhi.bipin@epa.gov*.

4. *PP 6E7083* (Docket ID number EPA–HQ–OPP–2006–0791). Alco Chemical, 122 C St., NW., Suite 740, Washington, DC 20001, proposes to establish an exemption from the requirement of a tolerance for residues of amylopectin, acid hydrolyzed, 1-octenylbutanedioate (CAS Registration No. 113894–85–2) and amylopectin, hydrogen 1-octadecenylbutanedioate (CAS Registration No. 125109–81–1), in or on food commodities when used as an inert ingredient in pesticide products. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Bipin Gandhi; telephone number: (703) 308–8380, e-mail address:*gandhi.bipin@epa.gov*.

5. *PP 6F7084*. (Docket ID number EPA–HQ–OPP–2006–0576). Sipcam Agro USA, Inc., 300 Colonial Center Parkway, # 230, Roswell, GA 30076, proposes to establish a tolerance for residues of the fungicide tetraconazole in or on the food commodity pecan at 0.05 ppm. High Pressure Liquid Chromatography (HPLC) with a Mass Spectrometer (MS) detector is used to measure and evaluate the chemical residue(s). Contact: Lisa Jones; telephone number: (703) 308–9424; e-mail address: *jones.lisa@epa.gov*.

6. *PP 6E7108*. (Docket ID number EPA–HQ–OPP–2006–0968). Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish tolerances for residues of the insecticide imidacloprid (1-[6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine in or on the food commodities caneberry subgroup 13A and raspberry, wild at 2.5 ppm. Contact: Barbara Madden; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

7. *PP 6E7116*. (Docket ID number EPA–HQ–OPP–2006–0968). Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish tolerances for residues of the insecticide imidacloprid (1-[6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine in or on the food commodities peanut at 0.45 parts ppm; peanut, hay at 70 ppm; peanut, meal at 0.9 ppm; kava, roots at 0.4 ppm; kava, leaves at 4.0 ppm; millet, pearl, grain at 0.05 ppm; millet, proso, grain at 0.05 ppm and oat, grain at 0.05 ppm.

For both petitions a common moiety method for imidacloprid and its metabolites containing the 6 chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary gas chromatography/mass spectroscopy (GC/MS) selective ion monitoring is used to measure and evaluate the chemical residues. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and high-performance liquid chromatography/ultraviolet (HPLC/UV) which has been validated by the EPA as well. Contact: Barbara Madden, telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

8. *PP 6F7117*. (Docket ID number EPA–HQ–OPP–2006–0890). Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596, proposes to establish tolerances for residues of the herbicide clethodim, (E)-()-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 5-[2-(ethylthio)propyl] cyclohexen-3-one and the 5-[2-(ethylthio)propyl]-5-hydroxycyclohexen-3-one moieties and their sulfoxides and sulfones, expressed as clethodim, in or on the raw agricultural commodities corn, field, forage at 0.2 ppm, corn, field, grain at 0.2 ppm, and corn, field, stover at 0.2 ppm. An analytical method was developed to measure the clethodim and its metabolites in field corn by gas chromatography with a flame photometric detector. Contact: Joanne I. Miller; telephone number: (703) 305–

6224; e-mail address: *Miller.Joanne@epa.gov*.

9. *PP 9F6023*. (Docket ID number EPA–HQ–OPP–2006–0576). Sipcam Agro USA, Inc., 300 Colonial Center Parkway, # 230, Roswell, GA 30076, proposes to establish a tolerance for residues of the fungicide tetraconazole in or on the food commodities peanut, nutmeat at 0.05 ppm and peanut, refined oil at 0.15 ppm. High Pressure Liquid Chromatography (HPLC) with a Mass Spectrometer (MS) detector is used to measure and evaluate the chemical residues. Contact: Lisa Jones; telephone number: (703) 308–9424; e-mail address: *jones.lisa@epa.gov.*

B. Amendment to an Existing Tolerance

PP 9F5066. (Docket ID number EPA–HQ–OPP–2006–0576). Sipcam Agro USA, Inc., 300 Colonial Center Parkway, # 230, Roswell, GA 30076, proposes to amend the tolerance(s) in 40 CFR 180.557 for residues of the fungicide tetraconazole in or on the food commodities sugarbeet roots at 0.05 ppm; sugarbeet top at 3.0; sugarbeet dried pulp at 0.15 ppm; sugarbeet molasses at 0.15 ppm; meat of cattle, goat, horse and sheep at 0.05 ppm; liver of cattle, goat, horse and sheep at 4.0 ppm; fat of cattle, goat, horse and sheep at 0.30 ppm; meat byproducts, except liver, of cattle, goat, horse and sheep at 0.10 ppm; and milk at 0.05 ppm. High Pressure Liquid Chromatography (HPLC) with a Mass Spectrometer (MS) detector is use to measure and evaluate the chemical residue(s). Contact: Lisa Jones; telephone number: (703) 308–9424; e-mail address: *jones.lisa@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 12, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–21710 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0911; FRL–8104–8]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 67979–EUP–T from Syngenta Seeds, Inc. requesting an experimental use permit (EUP) for the Vip3A and Cry1Ab plant-incorporated protectants. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before January 19, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0911, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0911. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The Federal regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those interested in agricultural biotechnology or those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

The 67979–EUP–T application is for 1,359 acres of VIP3A cotton, which contains VIP3A and Cry1Ab proteins to control certain lepidopteran pests. Proposed shipment/use dates are April 1, 2007 through March 31, 2008. Five trial protocols have been proposed, which include the following:

- Insect efficacy.
- Breeding and observation nursery.
- Seed increase.
- Product characterization and performance.
- Agronomic evaluation.

States involved include: Alabama, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

III. What Action is the Agency Taking?

Following the review of the Syngenta Seeds, Inc. application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 8, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–21422 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0794; FRL–8109–1]

Review of Chemical Proposals for Addition under the Stockholm Convention on Persistent Organic Pollutants; Solicitation of Information for the Development of Risk Management Evaluations and Risk Profiles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice solicits information relevant to the development of risk management evaluations pursuant to the Stockholm Convention on Persistent Organic Pollutants (POPs) for the following chemicals which are being reviewed for possible addition to the Stockholm Convention's (hereafter Convention) Annexes A, B, and/or C as POPs: Hexabromobiphenyl (HBB) (CAS No. 36355–01–8); pentabromodiphenyl ether (PeBDE) (CAS No. 32534–81–9); chlordecone (CAS No. 143–50–0); lindane (CAS No. 58–89–9); and perfluorooctane sulfonate (PFOS). Additionally, this notice solicits information relevant to the development of risk profiles pursuant to the Convention for the following chemicals which are also being reviewed for possible addition to the Convention's Annexes A, B, and/or C as POPs: Commercial octabromodiphenyl ether (octaBDE) (CAS No. 32536–52–0); pentachlorobenzene (PeCB) (CAS No. 608–93–5); short-chained chlorinated paraffins (SCCP) (CAS No. 85535–84–8); alpha-hexachlorocylcohexane (alpha-HCH) (CAS No. 319–84–6); and beta-hexachlorocyclohexane (beta-HCH) (CAS No. 319–85–7). EPA is issuing this notice to alert interested and potentially affected persons of these proposals and the status of their review under the Convention, and to encourage such persons to provide information relevant to the development of risk profiles and risk management evaluations under the Convention.

DATES: Comments must be received on or before January 4, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0794, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2006–0794. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0794. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' systems, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the 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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket, EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Rm. 3334), EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA website at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Linter, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Ellie Clark, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2962; e-mail address: *clark.ellie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to chemical substance and pesticide manufacturers, importers, and processors. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Procedures for preparing confidential information related to pesticides and industrial chemicals are in Unit I.B.1.* Send confidential information about industrial chemicals using the submission procedures under **ADDRESSES**. Send confidential information about pesticides to: Janice K. Jensen, Office of Pesticide Programs (7506P), Environmental Protection, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or hand delivered to: Janice K. Jensen, Government and International Services Branch, Office of Pesticide Programs, Potomac Yard South, 2777 S. Crystal Dr., Rm. #S11315, Arlington, VA 22202.

3. *Commenters should note that none of the CBI information received by EPA will be forwarded to the Convention Secretariat.* Information from submissions containing CBI may be considered by EPA in the development of the U.S. response. If commenters wish EPA to consider incorporating information in documents with CBI as part of the U.S. response, commenters should provide a sanitized copy of the documents. Sanitized copies must be complete except that all information claimed as CBI is deleted. EPA will place sanitized copies in the public docket.

4. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

The Agency is issuing this notice to increase awareness of the proposals concerning the chemicals subject to this notice, and to provide interested persons with an opportunity to provide relevant information to EPA for its consideration in the development of the United States' submissions relevant to Convention Annexes E and F for the chemical substances under review at this time for possible addition to Annexes A, B, and /or C of the

Convention. On November 27, 2006, and December 8, 2006, the Convention Secretariat (hereafter Secretariat) invited Parties and observers to submit to the POPs Review Committee (POPRC) (via the Secretariat) information specified in Annex F and Annex E (at *http://www.pops.int/documents/meetings/poprc/poprc.htm*) of the Convention, and other relevant information. The United States is an observer. EPA is requesting that any information be submitted to EPA on or before January 4, 2007. The United States intends to make a submission by February 2, 2007, to meet the Secretariat's deadline. In addition, EPA will consider the information during its review of the draft risk management evaluations and risk profiles developed by ad hoc working groups established under the POPRC in the coming months. The chemical listing process is discussed in more detail in Unit II.B. Individuals or organizations that wish to submit information directly to the POPRC via the Secretariat should work through their respective observer organizations, if any.

B. What is the Convention's Chemical Listing Process?

The Convention is a multilateral environmental agreement designed to protect human health and the environment from POPs. The United States signed the Convention in May of 2001 but has not yet ratified it (and thus is not a Party to the Convention). The United States currently participates as an observer in Convention activities. The Convention, which went into force in May of 2004, requires the Parties to reduce or eliminate the production and use of a number of intentionally produced POPs used as pesticides or industrial chemicals. The Convention also calls upon Parties to take certain specified measures to reduce releases of certain unintentionally produced POPs with the goal of their continuing minimization and, where feasible, ultimate elimination. The Convention also imposes controls on the handling of POPs wastes and on trade in POPs chemicals.

In addition, there are specific science-based procedures that Parties to the Convention must use when considering the addition of new chemicals to the Convention's Annexes. Article 8 of the Convention provides the process that must be followed for listing new chemicals in Annexes A, B, and/or C, and is described in summary below with certain associated implementation procedures being followed by POPRC:

1. A Party to the Convention may submit a proposal to the Secretariat for listing a chemical in Annexes A, B, and/or C. The proposal shall contain the information specified in Annex D of the Convention (''Information Requirements and Screening Criteria'').

2. The Secretariat verifies that the proposal contains the information specified in Annex D, and if the Secretariat is satisfied, the proposal is forwarded to POPRC.

3. POPRC examines the proposal, applies the Annex D screening criteria, and determines whether the screening criteria have been fulfilled.

4. If POPRC is satisfied that the criteria have been fulfilled, POPRC, through the Secretariat, will make the proposal and POPRC's evaluation available to all Parties and observers and invite them to submit the information specified in Annex E (''Information Requirements for the Risk Profiles'').

5. Draft risk profiles are prepared by ad hoc working groups under POPRC in accordance with Annex E for consideration by POPRC and made available to all Parties and observers to collect technical comments.

6. POPRC reviews the draft risk profile and technical comments, completes the risk profile, and determines whether the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects, such that global action is warranted.

7. If POPRC determines that action is warranted, then POPRC, through the Secretariat, will ask Parties and observers to provide information specified in Annex F (''Information on Socio-Economic Considerations'') to aid in the development of risk management evaluations (that include an analysis of possible control measures).

8. Draft risk management evaluations are prepared by ad hoc working groups under POPRC in accordance with Annex F for consideration by POPRC and made available to Parties and observers to collect technical comments.

9. POPRC reviews the draft risk management evaluation prepared by the ad hoc working group and completes it.

10. On the basis of the risk profile and the risk management evaluation for each chemical, POPRC recommends whether the chemical should be considered by the Conference of the Parties (COP) for listing in Annexes A, B, and/or C. (The type(s) of control measure(s) that might be introduced for a specific chemical would dictate whether the chemical would be listed in Annex A (elimination), Annex B (restriction), and/or Annex C (unintentional production) of the Convention.).

11. COP makes the final decision on listing the chemical in Annexes A, B, and/or C.

EPA anticipates issuing **Federal Register** notices soliciting information, when appropriate, during the listing process.

C. What Information is Being Requested for Risk Management Evaluations?

For the chemicals currently at the risk management stage (see Unit II.G.), EPA is seeking information that is supplementary to the information provided during previous stages in the review process (i.e., information relevant to Annexes D and E; the proposals, evaluations and risk profiles, as well as the Secretariat's letter soliciting information, are available at the Convention website (*http://www.pops.int/documents/meetings/poprc/poprc.htm*)). In addition, POPRC identified specific areas where information and data relevant to the chemicals under consideration would be particularly useful for the future process. This information is discussed in Unit II.G.

When providing information, keep in mind that the possible control measures under the Convention include, among others, the prohibition or severe restriction of production and use. Therefore, the provision of accurate, high quality information, as described in this notice and in the Secretariat letter soliciting information, is a priority for POPRC's evaluation.

Commenters are invited to provide information they deem relevant to POPRC's development of the risk management evaluation, such as that specified in Annex F of the Convention and other related information, as described below and in Unit II.G. Provide summary information and relevant references for:

1. Efficacy and efficiency of possible control measures in meeting risk reduction goals:

i. Describe possible control measures.

ii. Technical feasibility.

iii. Costs, including environmental and health costs.

2. Alternatives (products and processes):

i. Describe alternatives.

ii. Technical feasibility.

iii. Costs, including environmental and health costs.

iv. Efficacy.

v. Risk.

vi. Availability.

vii. Accessibility.

3. Positive and/or negative impacts on society of implementing possible control measures:

i. Health, including public, environmental, and occupational health.

ii. Agriculture, including aquaculture and forestry.
iii. Biota (biodiversity).
iv. Economic aspects.
v. Movement towards sustainable development.
vi. Social costs.
4. Waste and disposal implications (in particular, obsolete stocks of pesticides and clean-up of contaminated sites):
i. Technical feasibility.
ii. Cost.
5. Access to information and public education.
6. Status of control and monitoring capacity.
7. Any national or regional control actions taken, including information on alternatives, and other relevant risk management information.
8. Other relevant information for the risk management evaluation.
9. Other information requested by POPRC.

POPRC would also like to collect more Annex E information and has requested additional or updated information for the following:

- Production data, including quantity and location.
- Uses.
- Releases, such as discharges, losses, and emissions.

D. What information is Being Requested for Risk Profiles?

For chemicals at the risk profile stage (see Unit II.H.), EPA is seeking information that is supplementary to the information in the proposals on the chemicals and POPRC's evaluation of the proposals against the Annex D screening criteria. The proposals and the evaluations, as well as the Secretariat's letter inviting Parties and observers to provide information, are available at the Convention website: *http://www.pops.int/documents/meetings/poprc/poprc.htm*. In addition, POPRC has identified some additional types of information on SCCP that would be useful in the development of the risk profiles. That information is discussed in Unit II.H. and can also be found in the Secretariat's Letter of Invitation.

EPA has previously solicited information through the Lindane Reregistration Eligibility Document (RED), lindane and other HCH isomers risk assessments, and through its participation in the draft North American Regional Action Plan (NARAP) on Lindane and other hexachlorocyclohexane isomers. Consequently, EPA is only interested in any new information on alpha- and beta-hexachlorocyclohexane that may have been developed since those activities.

Commenters are invited to provide information they deem relevant to POPRC's development of risk profiles, such as that specified in Annex E of the Convention and other related information, as described below and in Unit II.H.:

1. Sources, including as appropriate:
i. Production data, including quantity and location.
ii. Uses.
iii. Releases, such as discharges, losses, and emissions.
2. Hazard assessment for the endpoint or endpoints of concern (as identified in the proposals and/or POPRC's evaluation of the proposals against the screening criteria of Annex D), including a consideration of toxicological interactions involving multiple chemicals.
3. Environmental fate, including data and information on the chemical and physical properties of a chemical as well as its persistence and how they are linked to its environmental transport, transfer within and between environmental compartments, degradation, and transformation to other chemicals.
4. Monitoring data.
5. Exposure in local areas and, in particular, as a result of long-range environmental transport, and including information regarding bio-availability.

E. How Should the Information be Provided?

1. *EPA requests that commenters, where possible, use the questionnaire developed by POPRC to provide their information.* The questionnaire with explanatory notes can be found on the Convention website at: *http://www.pops.int/documents/meetings/poprc/poprc.htm*. Information does not need to be provided for each item in the questionnaire. The explanatory notes under each item have been developed by POPRC and are meant to guide and assist the providers of information. Commenters are requested to include clear and precise references for all sources. Without the exact source of the information, POPRC will not be able to use the information. If the information is not readily available in the public literature, commenters may consider attaching the original source of the information to their submission. Commenters should indicate clearly on the questionnaire which chemical the information concerns and use one questionnaire per chemical. If for some reason the questionnaire does not provide an adequate mechanism for a type of comment or information, EPA requests that such comment or information be submitted using a similar format.

2. *Although POPRC has developed provisional arrangements for the treatment of confidential information, as mentioned in Unit I.B.3.* No CBI will be forwarded to the Secretariat. EPA will, however, consider such information in development of the U.S. response to the Secretariat. Instructions on where and how to submit comments and confidential information can be found in Unit I.B.2. and 3. and **ADDRESSES**.

3. Anyone wishing to have an opportunity to communicate with EPA orally on this issue should consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

F. What is the Agency's Authority for Taking this Action?

EPA is requesting comment and information under the authority of section 102(2)(F) of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, which directs all agencies of the U.S. Federal Government to ''[r]ecognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions and programs designed to maximize cooperation in anticipating and preventing a decline in the quality of mankind's world environment.'' Section 17(d) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) also provides additional support in that it directs the Administrator of EPA ''in cooperation with the Department of State and any other appropriate Federal agency, [to] participate and cooperate in any international efforts to develop improved pesticide research and regulations.''

G. What is the Status of Chemicals at the Risk Management Stage?

The first meeting of POPRC, took place November 7–11, 2005, in Geneva, Switzerland. Information about the Convention and the November POPRC meeting is available at the Convention website (*http://www.pops.int* and *http://www.pops.int/documents/meetings/poprc/poprc.htm*), respectively. POPRC had before it five proposals which were submitted for its consideration by Parties to the Convention, for addition to Annexes A, B, and/or C of the Convention. Three of the five proposals were for industrial chemicals:

- Pentabromodiphenyl ether.
- Hexabromobiphenyl.
- Perfluorooctane sulfonate.

Two of the five proposals were for pesticides:

- Lindane.
- Chlordecone.

In accordance with the procedure laid down in Article 8 of the Convention and discussed in Unit II.B., during the November meeting, POPRC examined the proposals and applied the screening criteria in Annex D of the Convention. With regard to all five chemicals, POPRC decided that it was satisfied that the screening criteria had been fulfilled and that further work should therefore be undertaken to develop risk profiles. Therefore, POPRC, through the Secretariat, requested that Parties and observers provide information relevant to POPRC's development of risk profiles for the five chemicals listed in this unit. In the **Federal Register** notice of January 30, 2006 (71 FR 4913) (FRL–7758–9), EPA invited commenters to provide EPA with information for the risk profiles.

The second meeting of POPRC took place November 6–10, 2006 in Geneva, Switzerland. EPA provided notice of this meeting and the POPRC's intention to consider risk profiles for the five chemicals in the **Federal Register** notice of October 6, 2006 (71 FR 59108) (FRL–8099–2). Information about the November POPRC meeting is available at the Convention website *http://www.pops.int/documents/meetings/poprc/poprc.htm*.

In accordance with the procedure laid down in Article 8 of the Convention and discussed in Unit II.B., during the November 2006 meeting POPRC examined the risk profiles with respect to the requirements in Annex E of the Convention. With regard to all five chemicals, POPRC decided that, based on the risk profiles, these chemicals were likely, as a result of their long-range environmental transport, to lead to significant adverse human health and environmental effects such that global action is warranted. Additionally, in accordance with paragraph 7(a) of Article 8 of the Convention, POPRC invited Parties and observers to submit to the Secretariat the information specified in Annex F to the Convention by February 2, 2007.

The next step in the process is for POPRC to prepare a risk management evaluation that includes an analysis of possible control measures, which as noted in Annex F (''Information on Socio-Economic Considerations'') should encompass ''the full range of options, including management and elimination.'' The risk management evaluation shall further evaluate and elaborate on the information referred to in Annexes D and E. Relevant information should include socio-economic considerations associated with possible control measures (see Unit II.C.) and should reflect due regard for the differing capabilities and conditions among the Parties. A draft outline of the risk management evaluation has been developed by POPRC, available in Annex IV of UNEP/POPS/POPRC.2/6, which can be found at *http://www.pops.int/documents/meetings/poprc/poprc.htm*. The risk management evaluation will take into account information to be submitted by Parties and observers as requested by POPRC through the Secretariat (a current step). Draft risk management evaluations developed by ad hoc working groups established under POPRC will be considered by the full POPRC and proceed as discussed in Unit II.B.

In addition to the Annex F information discussed in Unit II.C., POPRC identified the following specific areas where information and data relevant to the chemicals under consideration would be particularly useful for the future process.

1. *Perfluorooctane sulfonate*. POPRC is seeking data related to all potential PFOS precursors under the headings listed in Annex F. For purposes of this request, PFOS-related substances/potential PFOS precursors can be considered as all molecules having the following molecular formula: $C_8F_{17}SO_2Y$, where Y = OH, metal or other salt, halide, amide and other derivatives including polymers. A listing of potential precursors is provided on the POPRC website. This list was originally offered as additional information by Sweden in its 2005 proposal for listing PFOS. In addition to Annex F information, information is requested on the following:

i. Releases of PFOS and PFOS precursors from specific sources (including, but not limited to, consumer products, waste disposal, production, manufacturing and formulation).

ii. Production and uses of PFOS precursors.

iii. Toxicity and toxico-kinetics of PFOS precursors.

iv. Degradation and transformation rates of PFOS precursors into PFOS, notably under environmentally relevant conditions.

v. Bioavailability and accumulation of PFOS precursors.

vi. Solubility of PFOS precursors in water (including dissociation constants where appropriate).

2. *Chlordecone*. When evaluating chlordecone against the criteria contained in Annex D and during the preparation of the risk profile as described in Annex E, there was a lack of data on long-range environmental transport. Therefore, in addition to seeking information under the headings listed in Annex F, POPRC is seeking:

i. Monitoring data for chlordecone in remote areas and areas far from sources.

ii. Model results demonstrating long-range environmental transport.

3. *Hexabromobiphenyl*. When evaluating HBB against the criteria contained in Annex D and during the preparation of the risk profile as described in Annex E, it was considered that the risk profile would benefit from further data. Therefore, in addition to seeking information under the headings listed in Annex F, POPRC is seeking:

i. Data related to the ecotoxicity of HBB in aquatic systems and under environmentally relevant conditions, including exposures via food in aquatic species.

ii. Laboratory or field food-chain studies.

iii. Additional mammalian toxicity data.

iv. Critical body burdens.

v. Toxicokinetic information.

4. *Lindane*. When evaluating lindane (gamma-hexachlorocyclohexane (HCH)) against the criteria in Annex D, as well as during discussions on the risk profile according to Annex E, it became clear that the other two major isomers (alpha- and beta-HCH) should also be considered. For both alpha- and beta-HCH, POPRC satisfied itself at the November 2006 meeting that the screening criteria have been fulfilled. The draft risk profiles for alpha- and beta-HCH are currently being compiled by POPRC, and the request for Annex E information on them is discussed in Unit II.H. To facilitate an effective assessment for lindane under Annex F, the Secretariat's request stated that it would be very useful to receive and evaluate Annex F information on alpha- and beta-HCH at the same time. Having Annex F information on all three isomers will enable POPRC to treat them consistently as it prepares the risk management statement for lindane and alpha- and beta-HCH. In addition to the information listed in Annex F, information is requested on the following:

i. Whether production of lindane takes place (and quantities, if possible).

ii. Whether processes are used whereby the formation of unwanted isomers are reduced (and if possible to what extent).

iii. Whether alpha- and beta-HCH are used as raw materials in the production of other chemicals.

iv. The amounts of alpha- and beta-HCH generated as waste during the production of lindane.

v. Management of alpha- and beta-HCH wastes.

vi. Releases to the environment of alpha- and beta-HCH from stockpiles, obsolete stocks, and production wastes.

5. *Commercial pentabromodiphenyl ether (C-pentaBDE).* Evaluation of the risk profile for C-pentaBDE indicated the need for additional specificity on production, uses, and releases for this chemical mixture. Therefore, in addition to seeking information under the headings listed in Annex F, POPRC is seeking quantitative and qualitative data related to the production, uses, and releases of C-pentaBDE and its components.

H. What is the Status of Chemicals at the Risk Profile Stage?

The second meeting of POPRC took place on November 6–10, 2006, in Geneva, Switzerland. EPA provided notice of this meeting and POPRC's intention to consider proposals for the five chemicals listed below in the **Federal Register** notice of October 6, 2006. Information about the November POPRC meeting is available at the Convention website (*http://www.pops.int/documents/meetings/poprc/poprc.htm*), respectively. POPRC had before it five proposals which were submitted for its consideration by Parties to the Convention for addition to Annexes A, B, and/or C of the Convention.

1. Two of the five proposals were for industrial chemicals:

- Octabromodiphenyl ether.
- Short-chained chlorinated paraffins.

2. One of the five proposals was for a chemical with both industrial and pesticidal uses:

- Pentachlorobenzene.

3. Two of the five proposals were for pesticides:

- Alpha-hexachlorocyclohexane.
- Beta-hexachlorocyclohexane.

In accordance with the procedure laid down in Article 8 of the Convention and discussed in Unit II.B., during the November meeting, POPRC examined the proposals and applied the screening criteria in Annex D of the Convention. With regard to all five chemicals, POPRC decided that it was satisfied that the screening criteria had been fulfilled and, in accordance with paragraph 4(a) of Article 8 of the Convention, POPRC invited Parties and observers to submit to the Secretariat the information specified in Annex E to the Convention by February 2, 2007.

The next step in the process is for POPRC to prepare a risk profile for each of the chemicals to, as noted in Annex E, ''evaluate whether the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects, such that global action is warranted.'' The risk profile must further evaluate and elaborate on the information referred to in Annex D of the Convention and include, as far as possible, the information listed in Annex E. A draft outline of the risk profile has been developed by POPRC, available at *http://www.pops.int/documents/meetings/poprc/poprc.htm*. The risk profile will take into account information to be submitted by Parties and observers, as requested by POPRC through the Secretariat (a current step). The draft risk profiles developed by ad hoc working groups established under POPRC will be considered by the full POPRC and proceed as discussed in Unit II.B.

In addition to the Annex E information discussed in Unit II.D., POPRC determined, and the Secretariat requested in their December 8, 2006 letter, that additional information on the environmental fate of short-chained chlorinated paraffins or information relating to their properties which would enable a fuller evaluation of environmental fate as being particularly useful for the future process.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: December 14, 2006.

Wendy Cleland-Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. E6–21727 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

December 14, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 19, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via Internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0710.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 12,250 respondents; 1,083,196 responses.

Estimated Time Per Response: .50—2,880 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 1,055,150 hours.

Total Annual Cost: $625,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents request to submit information which they believe is confidential, they may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to OMB as an extension after this 60-day comment period to obtain the full three-year clearance from them. The Commission has implemented parts of Sections 251 and 252 of the Telecommunications Act of 1996 that affect local competition. Incumbent local exchange carriers (LECs) are required to offer interconnection, unbundled network elements (UNEs), transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECs must price such services at rates that are cost-based and just and reasonable and provide access to right-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–21767 Filed 12–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

December 7, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 20, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via Internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0953.

Title: Wireless Medical Telemetry Service (ET Docket No. 99–255).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 1 respondent; 2,500 responses.

Estimated Time Per Response: 1–4 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 10,000 hours.

Total Annual Cost: $500,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Respondents are not required to submit confidential information for this reporting requirement.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting, recordkeeping and/or third party disclosure requirements) after this 60 day comment period to obtain the full three-year clearance from them.

On June 12, 2000, the Commission released a Report and Order, ET Docket No. 99–255, FCC 00–211, which allocated spectrum and established rules for a ''Wireless Medical Telemetry Service'' (WMTS) that allows potentially life-critical equipment to operate in an interference-protected basis. Medical telemetry equipment is used in hospitals and health care facilities to transmit patient measurement data such as pulse and respiration rate to a nearby receiver, permitting greater patient mobility and increased comfort. The Commission designated a frequency coordinator, who maintains a database of all WMTS equipment. All parties using equipment in the WMTS are required to coordinate/register their operating frequency and other relevant technical operating parameters with the designated coordinator. The database provides a record of the frequencies used by each facility or device to assist parties in selecting frequencies to avoid interference. Without a database, there would be no record of WMTS usage because WMTS transmitters will not be individually licensed.

The designated frequency coordinator has the responsibility to maintain an accurate engineering database of all WMTS transmitters, identified by location (coordinates, street address, building), operating frequency, emission type and output power, frequency range(s) used, modulation scheme used, effective radiated power, number of transmitters in use at the health care facility at the time of registration, legal name of the authorized health care provider, and point of contact for authorized health care provider. The frequency coordinator will make the database available to WMTS users, equipment manufacturers and the public. The coordinator will also notify users of potential frequency conflicts.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–21769 Filed 12–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–06–72–A (Auction No. 72); DA 06–2437; AU Docket No. 06–214]

Auction of Phase II 220 MHz Spectrum Scheduled For June 20, 2007; Comments Sought on Competitive Bidding Procedures for Auction No. 72

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain Phase II 220 MHz Spectrum licenses (Phase II 220 MHz) scheduled to commence on June 20, 2007 (Auction No. 72). This document also seeks comments on competitive bidding procedures for Auction No. 72.

DATES: Comments are due on or before December 29, 2006, and reply comments are due on or before January 8, 2007.

ADDRESSES: Comments and reply comments must be identified by AU Docket No. 06–214; DA 06–2437. The Bureau requests that a copy of all comments and reply comments be submitted electronically to the following address: *auction72@fcc.gov*. In addition, comment and reply comments may be submitted by any of the following methods:

- *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.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureau continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, 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. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. 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.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auctions legal questions: Howard Davenport at (202) 418–0660. For general auction questions: Debbie Smith or Barbara Sibert at (717) 338–2888. *Mobility Division:* For service rules questions: Allen Barna (legal) or Gary Devlin (technical) at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 72 Comment Public Notice* released on December 12, 2006. The complete text of the *Auction No. 72 Comment Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 72 Comment Public Notice*, including attachments, as well as related Commission documents, also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate FCC document number for example, DA 06–2437. The *Auction No. 72 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://www.wireless.fcc.gov/auctions/72/*.

I. Licenses To Be Offered in Auction No. 72

1. The Wireless Telecommunications Bureau (Bureau) announces an auction of 94 Phase II 220 MHz Service licenses. This auction, which is designated Auction No. 72, is scheduled to commence on June 20, 2007.

2. The spectrum to be auctioned has been offered previously in other auctions but was unsold and/or returned to the Commission as a result of license cancellation or termination. A complete list of licenses available for Auction No. 72 is included as Attachment A of the *Auction No. 72 Comment Public Notice.*

3. Because of the previous history of licenses for 220 MHz spectrum, certain licenses available in Auction No. 72 are only available, in some cases, for part of a market. See table referenced in Attachment A of the *Auction No. 72 Comment Public Notice*.

4. *Incumbency Issues.* In the markets covered by the licenses to be offered in this auction, there are a number of incumbent Phase I 220 MHz licenses already licensed and operating on frequencies that were subject to earlier auctions. Such Phase I incumbents must be protected from harmful interference by Phase II 220 MHz licenses in accordance with the Commission's rules. These limitations may restrict the ability of Phase II geographic area licenses to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

II. Bureau Seeks Comment on Auction Procedures

5. The Bureau seeks comment on the following issues relating to Auction No. 72.

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

6. The Bureau proposes to auction all licenses included in Auction No. 72 using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

7. *Auction Format.* The Bureau has considered the possibility of using a simultaneous multiple-round auction format with package bidding (SMR–CPB), but does not believe that an SMR-PB format is likely to offer significant advantages to bidders in Auction No. 72, given the nature of the auction inventory. Under the Commission's SMR-PB rules, bidders can place bids on any groups of licenses they wish to win together, with the result that they win either all the licenses in a group or none of them. The Bureau's standard SMR auction format offers all licenses for bid at the same time, and allows bidders to bid on and win multiple licenses on a license-by-license basis, thereby facilitating aggregations. The Bureau believes use of the SMR format for

Auction No. 72 will be the simplest and most efficient means of auctioning the licenses in this inventory, and therefore, the Bureau proposes to conduct the auction using its standard SMR auction format. However, if commenters believe that the SMR-PB design would offer significant benefits, the Bureau invites their comments and requests that they describe what specific factors lead them to that conclusion.

8. *Information Available to Bidders Before and During an Auction.* The Bureau also seeks comment on whether to implement procedures that would limit the disclosure of information on bidder interests and identities prior to the close of bidding. Commenters should indicate what factors support the position they take on this issue and specifically, how these factors apply to an auction of this nature, with a limited number of localized, mostly geographically non-contiguous licenses. Commenters should address whether technological considerations, equipment availability, or competitive concerns weigh in favor of or against limiting the disclosure of information on bidder interests and identities relative to most past Commission spectrum auctions, or whether the Commission should condition the implementation of such limits on a measure of the competitiveness of the auction, such as the eligibility ratio or a modified version of the eligibility ratio.

ii. Round Structure

9. The Commission will conduct Auction No. 72 over the Internet. Alternatively, telephonic bidding will also be available via the Auction Bidder Line. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

10. The auction will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

11. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon bidding activity levels and other factors. The Bureau seeks comment on this proposal.

iii. Stopping Rule

12. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction No. 72, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or submits a withdrawal. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

13. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 72: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) keep the auction open even if no bidder submits any new bids, applies a waiver, or submits a withdrawal. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining waiver; and (c) declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close.

14. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the minimum acceptable bid percentage. The Bureau proposes to retain the discretion to use such stopping rule with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

15. For Auction No. 72, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

16. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the licenses for specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these factors in mind, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formulas:

EA Licenses $500.00 per license
EAG License $0.01 * 0.15 MHz * License Area Population

17. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 72 Comment Public Notice,* on a bidding unit per dollar basis. The number of bidding units for a given license is fixed and does not change during the auction as prices rise. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any

combination of licenses it selected on its short form application as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units.

18. The proposed number of bidding units for each license and associated upfront payment amounts are listed in Attachment A of the *Auction No. 72 Comment Public Notice.* The Bureau seeks comment on these proposals.

ii. Activity Rule

19. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

20. The Bureau proposes to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that the Bureau retains the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage of increase in revenue. The Bureau seeks comment on these proposals.

21. For Auction No. 72, the Bureau proposes the following activity requirements: *Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4). *Stage Two:* In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

22. The Bureau seeks comment on this proposal. Commenters that believe this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

iii. Activity Rule Waivers and Reducing Eligibility

23. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to particular licenses. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

24. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

25. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule as described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

26. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

27. The Bureau proposes that each bidder in Auction No. 72 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. The Bureau seeks comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

28. The Bureau proposes to establish minimum opening bid amounts for Auction No. 72. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process. The

Bureau does not propose a separate reserve price for the licenses to be offered in Auction No. 72.

29. Specifically, for Auction No. 72, the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population as follows:

EA Licenses $500.00 per license
EAG License $0.01 * 0.15 MHz * License Area Population

This proposed minimum opening bid amount for each license available in Auction No. 72 is set forth in Attachment A of the *Auction No. 72 Comment Public Notice.* The Bureau seeks comment on this proposal.

30. If commenters believe that this minimum opening bid amount will result in unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the licenses being auctioned. The Bureau seeks comment on whether, consistent with Section 309(j) of the Communications Act, the public interest would be served by having no minimum opening bid amount or reserve price.

v. Bid Amounts

31. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license in any of nine different amounts. Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license.

32. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

33. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round, based on an activity index which is a weighted average of the number of bids in that round and the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Commission will initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment B of the *Auction No. 72 Comment Public Notice.*

34. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is ten percent, the calculation is (minimum acceptable bid amount) * (1 + 0.1), rounded, or (minimum acceptable bid amount) * 1.1, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.2, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.3, rounded; etc. The Bureau will round the results of these calculations, as well as the calculations to determine the minimum acceptable bid amounts, using its standard rounding procedures. For Auction No. 72, the Bureau proposes to use a bid increment percentage of ten percent to calculate the eight additional acceptable bid amounts.

35. The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage of the provisionally winning bid used to determine the minimum acceptable bid, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction. The Bureau seeks comment on its proposals for minimum acceptable bids amount and additional percentages as described in the *Auction No. 72 Comment Public Notice.*

vi. Provisionally Winning Bids

36. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids), the Bureau will use a random number generator to select a single provisionally winning bid from among the tied bids. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

37. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

38. For Auction No. 72, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed

within that round. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

39. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

40. The Bureau proposes to limit each bidder to withdrawing provisionally winning bids in no more than two rounds during the course of the auction. The two rounds in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in either of the rounds in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules.

C. Post-Auction Procedures

i. Interim Withdrawal Payment Percentage

41. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). However, if a license for which there has been a withdrawn bid is neither subject to a subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is subject to a higher bid or won in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment.

42. The Commission has indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate licenses offered, such as when few licenses are offered, the licenses offered are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining licenses.

43. With respect to the licenses being offered in Auction No. 72, the service rules permit a variety of fixed, mobile, and paging services, though the opportunities for combining licenses on adjacent frequencies or in adjacent areas are more limited than has been the case in previous auctions of licenses in the Phase II 220 MHz service. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with the Bureau's interest in deterring abuses of our bidding, the Bureau proposes a percentage below the maximum twenty percent permitted under the current rules but above the three percent previously provided by the Commission's rules. Specifically, the Bureau proposes to establish an interim bid withdrawal payment of ten percent of the withdrawn bid for this auction. The Bureau seeks comment on this proposal.

ii. Additional Default Payment Percentage

44. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

45. The *CSEA/Part 1 Report and Order,* 71 FR 6214, February 7, 2006, modified § 1.2104(g)(2) by, inter alia, increasing the three percent limit on the additional default payment for non-combinatorial auctions to twenty percent. Under the modified rule, the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of three percent up to a maximum of twenty percent. As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the inventory of the licenses being offered.

46. For Auction No. 72, the Bureau proposes to establish an additional default payment of ten percent. As noted in the *CSEA/Part 1 Report and Order,* defaults weaken the integrity of the auction process and impede the deployment of service to the public, and an additional default payment of more than three percent will be more effective in deterring defaults. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction No. 72 are likely to be unusually great. The Bureau seeks comment on this proposal.

47. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E6–21637 Filed 12–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2798]

Petition for Reconsideration of Action in Rulemaking Proceeding

December 6, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to

47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by January 4, 2007. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Burkesville, Greensburg, Hodgenville, Horse Cave, Lebanon, Lebanon Junction, Lewisport, Louisville, Lyndon, New Haven, Springfield and St. Matthews, Kentucky, Edinburgh, Hope, Tell City and Versailles, Indiana, Belle Meade, Goodlettsville, Hendersonville, Manchester and Millersville, Tennessee) (MB Docket No. 06–77).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–21638 Filed 12–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2800]

Petitions for Reconsideration of Action in Rulemaking Proceeding

December 8, 2006.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by January 4, 2007. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ashland, Greensburg, and Kingsley, Kansas and Alva, Medford, and Mustang, Oklahoma (MB Docket No. 06–65).

Number of Petitions Filed: 1.

In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lone, Oregon; Walla Walla, Washington and Athena, Hermiston, La Grande, and Arlington, Oregon) (MB Docket No. 05–9).

In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Monument, Oregon; Prairie City, Prineville, and Sisters, Oregon and Weiser, Lebanon, Paisley, and Diamond Lake, Oregon and Goldendale, Washington) (MB Docket No. 05–10).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–21639 Filed 12–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2801]

Petition for Reconsideration of Action in Rulemaking Proceeding

December 8, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC, or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by January 4, 2007. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems (WT Docket No. 04–344).

Petition for Rule Making Filed by National Telecommunications and Information Administration (RM–10821).

Emergency Petition for Declaratory Ruling Filed by MariTel, Inc.

Amendment of the Commission's Rules Concerning Maritime Communications (PR Docket No. 92–257).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–21640 Filed 12–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notices

DATE & TIME: Tuesday, January 9, 2007 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–9815 Filed 12–18–06; 3:08 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing an Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Friday, December 22, 2006.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION:

Limitations on Excess Stock and Retained Earnings Requirements for the Federal Home Loan Banks.

Appointment of Federal Home Loan Bank Directors.

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: December 15, 2006.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 06–9793 Filed 12–15–06; 5:15 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 010099–046.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk A/S; ANL Container Line Pty Ltd.; American President Lines, Ltd.; APL Co. Pte. Ltd.; APL Limited; Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Companhia Libra de Navegacao; COSCO Container Lines Company Limited; Crowley Maritime Corporation; Delmas SAS; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Malaysia International Shipping Corporation Berhad; Mediterranean Shipping Company S.A.; Mitsui O.S.K. Lines, Ltd.; Montemar Maritima S.A.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Norasia Container Line Limited; Orient Overseas Container Line, Limited; Pacific International Lines (Pte) Ltd.; Safmarine Container Line N.V.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth, Esq.; Preston Gates Ellis & Rouvelas Meeds LLP; 1735 New York Avenue; Suite 500; Washington, DC 20006–5209.

Synopsis: The amendment changes CP Ships USA LLC's corporate name to Hapag-Lloyd USA LLC.

Agreement No.: 011547–022.

Title: Eastern Mediterranean Discussion Agreement.

Parties: COSCO Container Lines Co. Ltd.; China Shipping Container Lines Co., Ltd.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes Turkon Container Transportation and Shipping, Inc. as a party to the agreement.

Agreement No.: 011984.

Title: CSAV/NYK Venezuela Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and Nippon Yusen Kaisha.

Filing Party: Marc J. Fink, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes CSAV to charter space to NYK for the carriage of motor vehicles on car carriers from Baltimore to ports in Venezuela through January 10, 2007.

By order of the Federal Maritime Commission.

Dated: December 15, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–21757 Filed 12–19–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

Platinum Moving Services, LLC, 2 Cessna Court, Gaithersburg, MD 20879. Officers: Raquel Fazio, Manager (Qualifying Individual), Eduardo Jorge Fazio, Gen. Manager.

APL Logistics Ltd., 456 Alexandra Road, #06–00, NOL Building, Singapore 119962, Officers: Ian Moore, Manager Product Development (Qualifying Individual), Cheng Wai Keung, Director.

Duncan International Shipping, 1082 Rodgers Avenue, Brooklyn, NY 11226, Noel N. Griffith, Sole Proprietor.

Sola Forwarding Inc., 70 Bowery Street, Suite 204, New York, NY 10013, Officers: Kit Yee Man, Vice President (Qualifying Individual), Kenneth Tran, President.

La Solucion Cargo Express Inc., 3900 S.W. 52nd Ave., #401, Hollywood, FL 33023. Officer: Hermogenes R. Simo, President (Qualifying Individual).

Oconca Logistics (USA) Inc., 175–01 Rockaway Blvd., Suite 218, Jamaica, NY 11434. Officers: Xiao Jun He, Vice President (Qualifying Individual), Yuan Li, President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Logitech Shipping, Inc., 838 Pine Avenue, #108, Long Beach, CA 90813. Officer: Johnny Moegelvang Hyldmar, President (Qualifying Individual).

Ocean Express Marine USA Inc., 33 Arbor Drive, Howell, NJ 07731 Officer: Hassanein Moustafa Mohamed Youssef, President (Qualifying Individual).

PRO Cargo Solutions, Inc., 23924 Pennsylvania Ave., Suite #3, Lomita, CA 90717. Officer: Su Gyung Kim, President (Qualifying Individual).

Sea & Air Global Inc., 811 N. Catalina Avenue, #3012, Redondo Beach, CA 90277. Officer: Laurent Saluzeat, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

EFM Management, Inc., 2551 Santa Fe Avenue, Redondo Beach, CA 90278. Officer: Steve Botting, Vice President (Qualifying Individual).

Freight Yours, Inc., 1164 West Duarte Road, #12A, Arcadia, CA 91007. Officers: Roberta Lee, CEO (Qualifying Individual), Cecilia Lee, Secretary.

SMSI International Inc., 7566 Pinewood Tr., West Bloomfield, WI 48322, Officer: Yevgeniy Eposhteyn, Vice President (Qualifying Individual).

Dated: December 15, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–21756 Filed 12–19–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank

indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 5, 2007.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Thomas M. Marcuccilli and James C. Marcuccilli, both of Fort Wayne, Indiana, and their immediate families; Sandra Joan Marcuccilli, Fort Wayne, Indiana; Dr. Meagan M. Marcuccilli, Irvine, California; Meredith A. Marcuccilli, Cincinnati, Ohio; Kathryn L. Marcuccilli, South Bend, Indiana; Patrice Marcuccilli, Fort Wayne, Indiana; Morgan Marcuccilli, Vallejo, California; Kristin Marcuccilli, South Bend, Indiana and Thomas P. Marcuccilli, Chicago, Illinois; to retain voting shares of STAR Financial Group, Inc., Fort Wayne, Indiana, and thereby indirectly acquire STAR Financial Bank, Fort Wayne, Indiana.

Board of Governors of the Federal Reserve System, December 15, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21745 Filed 12–19–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 2007.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First Busey Corporation, Urbana, Illinois, to merge with Main Street Trust, Inc., Champaign, Illinois, and thereby indirectly acquire Main Street Bank & Trust, Champaign, Illinois.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First Banks, Inc., Hazelwood, Missouri, and The San Francisco Company, St. Louis, Missouri; to acquire 100 percent of the voting shares of Royal Oaks Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Royal Oaks Bank, SSB, Houston, Texas.

Board of Governors of the Federal Reserve System, December 15, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21744 Filed 12–19–06; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINSTRATION

Implementation of a mileage based Fuel Cost Price Adjustment (Surcharge) for Household Goods

AGENCY: Federal Acquisition Service, GSA

ACTION: Notice for Comments

SUMMARY: GSA is proposing a change to the Centralized Household Goods Traffic Management Program (CHAMP) and the Household Goods Standard Tender of Service (HTOS) to implement a mileage based Fuel Cost Price Adjustment on the shipment of household goods effective May 1, 2007.

DATES: Interested parties should submit written comments before January 10, 2007.

ADDRESSES: Mail comments to General Services Administration, Federal Acquisition Service, Travel and Transportation Management Division (6FBDX), 1500 East Bannister Road, Building 6, Kansas City, Missouri 64131. Comments may be sent via email to *reg6.transportation@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Kellhofer, Transportation Programs Branch, by telephone at 816–823–3646 or via email at *brian.kellhofer@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

GSA's CHAMP uses the Domestic Household Goods Government Rate Tender (415–G) published by the American Moving and Storage Association (AMSA) through its Household Goods Carriers'' Bureau Committee. The tender contains a Fuel Cost Price Adjustment (Surcharge) provision identified in Item 16, which GSA has utilized since May 2000. The current Fuel Cost Price Adjustment calculation is based on the net transportation charges of the line haul and the delivery in and delivery out of storage in transit (SIT). The Fuel Cost Price Adjustment is designed to compensate the Transportation Service Provider (TSP) when the cost of diesel fuel exceeds $1.399. When applicable, a percentage as identified in Item 16 is taken against the net line haul charges.

GSA is proposing changing the Fuel Cost Price Adjustment methodology from a percentage based to a mileage based calculation. The mileage based Fuel Cost Price Adjustment will be calculated on the distance between the shipment's origin and destination, and if applicable, the distance for delivery in or delivery out of storage in transit (SIT), using the billable mileage as currently identified by ALK Technologies. When the cost of diesel fuel exceeds $1.399, as identified by the Department of Energy (DOE) on the first Monday of every month, with an effective date of the 15th day of the same month, the TSP may calculate a fuel surcharge based on the difference between the DOE price and the trigger price of $1.40. Effective May 1, 2007, this will be accomplished by first taking the number of billable miles and dividing it by 4.5 to identify the number of gallons of fuel used. The total will then be multiplied by the cost difference between the DOE price and $1.399. Beginning May 1, 2008, the number of billable miles will be divided by five (5) to identify the number of gallons of fuel used.

B. Substantive Changes

The implementation of the mileage based Fuel Cost Price Adjustment reflects a more accurate view of additional cost incurred by TSPs for the increases in the fuel costs. It eliminates

weight pricing and aligns the fuel cost with the distance the shipment travels and the fuel usage. As a result of this change, agencies should realize transportation cost savings.

Dated: December 14, 2006.

Tauna T. Delmonico

Director, Travel and Transportation Management Division (FBL), GSA

[FR Doc. E6–21732 Filed 12–19–06; 8:45 am]

BILLING CODE 6820–89–S

GENERAL SERVICES ADMINISTRATION

2006–N01

No FEAR Act Notice

AGENCY: General Services Administration

ACTION: Notice.

SUMMARY: The General Services Administration is publishing this notice to inform Federal employees, former Federal employees and applicants for Federal employment of the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws.

FOR FURTHER INFORMATION CONTACT: Jearline Nicome at (202) 501–2143.

No FEAR Act Notice

The General Services Administration is committed to ensuring that Federal employees, former Federal employees and applicants are notified of the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws. 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. Although not covered by the No Fear Act, discrimination on the basis of sexual orientation is prohibited by Executive Order 11478, as amended by Executive Order 13087.

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 Lawsand Whistleblower Protection Laws sections 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*. Attentiveness to ensuring a work environment that is free from discrimination and reprisal is essential to maintain our world class workplace.

Existing Rights Unchanged

Please be aware that, 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: December 5, 2006

Lurita Doan

Administrator,General Services Administration

[FR Doc. E6–21733 Filed 12–19–06; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–0028]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of Customer Satisfaction with the Agency for Toxic Substances and Disease Registry Internet Home Page and Links (OMB No. 0923–0028)—Extension—Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

ATSDR considers evaluation to be a critical component for enhancing program effectiveness and improving resource management. ATSDR's mandate under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, is to assess the presence and nature of health hazards at specific Superfund sites. To help prevent or reduce further exposure and the illnesses that result from such exposures. ATSDR, the lead Agency within the Public Health Service for implementing the health-related provisions of CERCLA and its 1986 amendments, the Superfund Amendments and Re-authorization Act (SARA), ATSDR received additional responsibilities in environmental public health. This act broadened ATSDR's responsibilities in the areas of health assessments, establishment and maintenance of toxicologic databases, information dissemination, and medical education. Furthermore, in accordance with the Government Performance and Results Act of 1993 (Pub. L. 103–62), the e-Government Act of 2002, and the Federal Enterprise Architecture are key elements of the Presidents Management Agenda. These ''e-government'' initiatives have required staff at all levels of the Federal government with the improvement of program effectiveness and public accountability by promoting new focuses on results, service quality, and customer satisfaction. These staff are further charged with responsibility to articulate clearly the results of their programs in terms that are understandable to their customers, their stakeholders, and the American taxpayer. This project addresses these concerns and serves to improve ATSDR's health promotion agenda by providing data on which to assess and improve the usefulness and usability of information provided via Internet.

ATSDRs extension (continuation) efforts will follow the guidance articulated in our reinstatement application submitted and approved in 2003. Our current survey, the ''ATSDR Web Site User Satisfaction Survey,'' was combined in the past under project 0920–0449 ''Evaluation of Customer Satisfaction of the CDC and ATSDR Internet Home Page and Links.'' Having our own survey would allow us to tailor the survey to our needs, manage the project effectively, and ensure that we collect the necessary information to evaluate customer satisfaction of our Web site. The 2003 reinstatement request was further modified by our most recent I–83c submission adding five replicate product-specific surveys to the OMB 0923–0028 inventory for this project. ATSDR is requesting an extension without change for the following surveys:

- ATSDR Web Site User Satisfaction Survey (WSUS)
- Toxicological Profiles User Satisfaction Survey (TPUS)
- ToxFAQs™ User Satisfaction Survey (TFUS)
- Public Health Statements User Satisfaction Survey (PHSUS)
- Toxicology Curriculum for Communities Training Manual User Satisfaction Survey (TCCUS)
- ToxProfiles™ CD–ROM User Satisfaction Survey (TP–CDUS)

ATSDR has designed this site to serve the general-public, persons at risk for exposure to hazardous substances, collaborating organizations, state and local governments, and health professionals. As a ''Support Delivery of Services'' tool, the ATSDR Web site presents information focused on prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment. Furthermore, as a Web based delivery tool it advances the agencies health promotional messages, product outreach activities, and future survey options currently under consideration. Therefore, it is critical that ATSDR have the capacity to answer whether or not these expenditures elicit the desired effects or impact. The results of this project will ensure that these audiences will continue to find our knowledge products and informational pieces easy to access, clear, informative and useful. Specifically, this project will continue to examine whether current and future informational updates are presented in an appropriate technological format and whether it meets the needs, wants, and preferences of visitors (''customers'') to the ATSDR Web site.

This extension request is for a three-year period. The survey questions have been held to the absolute minimum required for the use of the data. There are no costs to the respondents other than their time.

Estimate of Annualized Burden Hours:

Respondents & percent of form name use	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
ATSDR Web site Visitors (50%)	WSUS	1,000	1	5/60	83
ATSDR Web site Visitors (15%)	TPUS	300	1	5/60	25
ATSDR Web site Visitors (15%)	TFUS	300	1	5/60	25
ATSDR Web site Visitors (5%)	PHSUS	100	1	5/60	8
ATSDR Web site Visitors (8%)	TCCUS	160	1	5/60	13
ATSDR Web site Visitors (7%)	TP–CDUS	140	1	5/60	12
Total					166

Dated: December 14, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–21718 Filed 12–19–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–06BU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The Effectiveness of Teen Safe Driving Messages and Creative Elements on Parents and Teens—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Car crashes are the number one killer of teens, accounting for approximately one-third of all deaths within this age group. The National Center for Health Statistics reports that in 2004, a total of 3,620 young drivers were killed and an additional 303,000 were injured in motor vehicle crashes.

In order to reduce these preventable deaths and injuries, parental awareness and education about Graduated Driver's Licensing (GDL) laws and the ways that parents can influence their children's safe driving are necessary. In preparation for a national campaign to educate parents about their role in their teens' driver education, it is necessary to determine the most effective messages and channels through which to communicate with parents.

Ogilvy Public Relations Worldwide, on behalf of CDC, will conduct two studies to assess the appropriateness and impact of messages and creative materials intended to (a) increase parental involvement in their teen's driving education and experience, and (b) encourage teens to adopt safer driving practices.

The first information collection will be accomplished through focus group testing of campaign messages and materials with representatives from our target audiences, parents and teens, in two cities in the U.S. The findings will provide valuable information regarding parents' and teens' levels of awareness and concern about safe driving; motivators for behavior change, especially GDL compliance; and message/channel preferences. The information collected will be used to develop final creative materials to implement the teen safe driving campaign in pilot cities.

The second information collection will be accomplished through pilot city testing, which will evaluate knowledge, attitude and behaviors of intended audiences both pre- and post-communications campaign. The campaign will target parents of newly-licensed drivers. It will encourage parents to understand state regulations regarding new drivers, talk with their teens about safe driving practices, and both manage and monitor their teens' driving behavior. Testing will be conducted through brief telephone surveys intended to assess knowledge, attitudes and behaviors of parents and teens related to safe driving practices, GDL laws, and parental management of new drivers before and after the campaign; with the goal of observing a marked increase in parental management at the time of the post-campaign survey. CDC anticipates screening 1,777 individuals and that 45% of these will qualify for the survey testing. Pending CDC's decision whether or not to include teens in survey testing, the breakdown of the groups shown in the tables below may change. However, the total number of respondents and screeners will remain the same.

There is no cost to the respondents other than their time.

Estimated Annualized Burden Hours:

PHASE 1.—FOCUS GROUP TESTING

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden per response (in hours)	Annual total burden requested (in hours)
Rejected Screeners	152	1.0	1/60	2
Accepted Screeners	48	1.0	5/60	4
Parents	32	1.0	2.0	64
Teens	16	1.0	2.0	32
Total				102

PHASE 2.—PRE- AND POST-INTERVENTION PILOT CITY SURVEY TESTING

[based on two cities]

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden per response (in hours)	Estimated annual total burden hours requested
Screeners	1,777	2.0	1/60	59
Parents	600	2.0	15/60	300
Teens	200	2.0	15/60	100
Total				459

Dated: December 13, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–21719 Filed 12–19–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0237]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications—(OMB Control Number 0910–0523)—Extension

This regulation relates to agency management and organization and has two purposes. The first is to implement section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)), as added by the Safe Medical Devices Act of 1990 (Public Law 101–629), and amended by the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), by specifying how FDA will determine the organizational component within FDA assigned to have primary jurisdiction for the premarket review and regulation of products that are comprised of any of the following combinations: (1) A drug and a device; (2) a device and a biological; (3) a biological and a drug; or (4) a drug, a device, and a biological. The second purpose of this regulation is to enhance the efficiency of agency management and operations by providing procedures for classifying and determining which agency component is designated to have primary jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute. The regulation establishes a procedure by which an applicant may obtain an assignment or designation determination. The regulation requires that the request include the identity of the applicant, a comprehensive description of the product and its proposed use, and the applicant's recommendation as to which agency component should have primary jurisdiction, with an accompanying statement of reasons. The information submitted would be used by FDA as the basis for making the assignment or designation decision. Most information required by the regulation is already required for premarket applications affecting drugs, devices, biologicals, and combination products. The respondents will be businesses or other for-profit organizations.

In the **Federal Register** of June 22, 2006 (71 FR 35916), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Part 3	43	1	43	24	1,032

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 13, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–21636 Filed 12–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0202]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—21 CFR 1.278 to 1.285 (OMB Control Number 0910–0520)—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 801(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(m)), which requires that FDA receive prior notice for food, including food for animals, that is imported or offered for import into the United States. Sections 1.278 to 1.282 of FDA's regulations (21 CFR 1.278 to 1.282) set forth the requirements for submitting prior notice; §§ 1.283(d) and 1.285(j) (21 CFR 1.283(d) and 1.285(j)) set forth the procedure for requesting FDA review after an article of food has been refused admission under section 801(m)(1) of the act or placed under hold under section 801(l) of the act; and § 1.285(i) (21 CFR 1.285(i)) sets forth the procedure for post-hold submissions. Advance notice of imported food allows FDA, with the support of the Bureau of Customs and Border Protection (CBP), to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies.

Any person with knowledge of the required information may submit prior notice for an article of food. Thus, the respondents to this information collection may include importers, owners, ultimate consignees, shippers, and carriers.

FDA's regulations require that prior notice of imported food be submitted electronically using CBP's Automated Broker Interface of the Automated Commercial System (ABI/ACS) (§ 1.280(a)(1)) or the FDA Prior Notice (PN) System Interface (Form FDA 3540) (§ 1.280(a)(2)). The term ''Form FDA 3540'' refers to the electronic system known as the FDA PN System Interface, which is available at *http://www.access.fda.gov*. Prior notice must be submitted electronically using either ABI/ACS or the FDA PN System Interface. Information collected by FDA in the prior notice submission includes: The submitter and transmitter (if different from the submitter); entry type and CBP identifier; the article of food, including complete FDA product code; the manufacturer, for an article of food no longer in its natural state; the grower, if known, for an article of food that is in its natural state; the FDA Country of Production; the shipper, except for food imported by international mail; the country from which the article of food is shipped or, if the food is imported by international mail, the anticipated date of mailing and country from which the food is mailed; the anticipated arrival information or, if the food is imported by international mail, the U.S. recipient; the importer, owner, and ultimate consignee, except for food imported by international mail or transshipped through the United States; the carrier and mode of transportation, except for food imported by international mail; and planned shipment information, except for food imported by international mail (§ 1.281).

Much of the information collected for prior notice is identical to the information collected for FDA's importer's entry notice, which has been approved under OMB control number 0910–0046. The information in FDA's importer's entry notice is collected electronically via CBP's ABI/ACS at the same time the respondent files an entry for import with CBP. To avoid double-counting the burden hours already counted in the importer's entry notice information collection, the burden hour analysis in table 1 of this document reflects the reduced burden for prior notice submitted through ABI/ACS in the column labeled ''Hours per Response.''

In addition to submitting a prior notice, a submitter should cancel a prior notice and must resubmit the information if information changes after FDA has confirmed a prior notice submission for review (e.g., if the identity of the manufacturer changes) (§ 1.282). However, changes in the estimated quantity, anticipated arrival information, or planned shipment information do not require resubmission of prior notice after FDA has confirmed a prior notice submission for review (§ 1.282(a)(1)(i) to 1.282(a)(1)(iii)). In the event that an article of food has been refused admission under section 801(m)(1) of the act or placed under

hold under section 801(l) of the act, §§ 1.283(d) and 1.285(j) set forth the procedure for requesting FDA review and the information required to be included in a request for review. In the event that an article of food has been placed under hold under section 801(l) of the act, § 1.285(i) sets forth the procedure for and the information to be included in a post-hold submission.

In the **Federal Register** of May 31, 2006 (71 FR 30940), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received two timely letters in response, each containing one or more comments. To the extent that the comments suggest changes to the requirements of the prior notice interim final rule (21 CFR Part 1, subpart I), such a request is outside the scope of the four collection of information topics on which the notice solicits comments and, thus, will not be addressed here. The interim final rule established a 75-day comment period. In order to ensure that those commenting on the interim final rule had the benefit of FDA's outreach and educational efforts and had experience with the systems, timeframes, and data elements of the prior notice system, FDA reopened the comment period for 30 days on April 14, 2004 (69 FR 19763), and for an additional 60 days on May 18, 2004 (69 FR 28060), for a total of 165 days. The prior notice final rule currently is being developed and will publish in the near future. The agency's responses to the comments received in response to the 60-day notice published May 31, 2006, reference provisions found in the prior notice interim final rule and will not address any changes being considered for the final rule.

(Comment) One comment stated that prior notice information provided to FDA has no practical utility for goods transshipped through the United States, from one point in Canada to another point in Canada, when the goods are shipped by a Customs-Trade Partnership Against Terrorism (C-TPAT) or Partners In Protection (PIP) certified exporter, and carried by a C-TPAT certified carrier, with a C-TPAT approved bolt seal on the container. The comment argued that because these goods do not enter U.S. commerce and the parties responsible for the goods (the exporter and carrier) are classified as ''low risk,'' the shipments have already been determined to be ''low risk,'' and thus, prior notice review by FDA is not necessary and the prior notice information provided to FDA has no practical utility. The comment also noted that Free and Secure Trade (FAST) approved drivers are now accepted by the U.S. Department of Homeland Security for the transportation of dangerous goods (including explosives) into and through the United States and argued that FAST approved drivers for shipments of food products transshipped through the United States should make it unnecessary to provide prior notice information for the shipment.

(Response) FDA does not agree that obtaining prior notice information is unnecessary if shipments can be characterized as ''low risk.'' Prior notice is a statutory requirement under section 801(m) of the act. As explained in the prior notice interim final rule, section 801(m) of the act applies to all food imported or offered for import into the United States except as outlined in 21 CFR 1.277(b) (68 FR 58974 at 58993), including ''low-risk'' shipments.

(Comment) Another comment asserted that transhipments, including both those originating in Canada and entering the United States for purposes of export to a third country, as well as Canadian shipments routed through the United States and returned to Canada, are transported under bond and information about the transshipments is entered in ABI/ACS. This comment further asserted that ABI/ACS captures the information necessary to identify transhipments that may pose a risk as defined by FDA. The comment suggested that it would minimize the burden of the collection of information if exporters of transhipments through the United States would be required to provide only the information originally required in ABI/ACS and not be required to enter additional information for FDA prior notice purposes.

(Response) FDA disagrees. ABI/ACS information submitted during entry cannot substitute for the submission of prior notice because it does not meet the requirements of the Bioterrorism Act, such as providing FDA with certain specified information before the food arrives in the United States. As we explained in the prior notice interim final rule, entry may be made up to 15 days after a food arrives in the United States and does not contain all of the information required in a prior notice, such as the country from which the article is shipped (68 FR 58974 at 58975–58976). The information in a prior notice is necessary for FDA to determine whether it should examine the food at the U.S. port of arrival. Moreover, the comment implies that these shipments should be exempt from prior notice requirements because the shipments are under strict CBP control and are secured by a bond, i.e., that these shipments are low-risk. As we explained previously, section 801(m) of the act requires prior notice for all food imported or offered for import into the United States except as outlined in 21 CFR 1.277(b). FDA notes, however, the policy established in the March 2005 revision to the prior notice interim final rule CPG, which addresses imported food arriving from and exiting to the same country. It describes the situations and conditions under which FDA and CBP should typically consider not taking regulatory action despite the fact that prior notice is not submitted.

(Comment) One comment noted that ''Standard Manifest'' data elements must be transmitted to CBP prior to arrival in order to clear a regular shipment, and the ''Preferred Manifest'' data elements must be transmitted to CBP in order to clear a low risk FAST/C-TPAT shipment. In addition to these CBP transmissions, a separate prior notice transmission to FDA, with a different data set, is required to meet the prior notice requirements. The comment suggested that, to minimize the burden of the collection of information on respondents, FDA and CBP should work together to develop integrated data elements for both regular and FAST/C-TPAT shipments which would meet both FDA and CBP requirements, and the information required should be submitted once and then transferred to the other agency as required.

(Response) FDA disagrees. FDA's Bioterrorism Act and CBP's Trade Act of 2002 have different statutory requirements. For example under section 801(m) of the act, FDA, not CBP, must receive prior notice. In implementing these laws, the agencies require different information and use different targeting and screening tools. FDA and CBP have discussed interfacing with the Automated Manifest System (AMS) (the module of ACS through which carriers, port authorities, or service bureaus transmit electronically the cargo declaration portion of the inward foreign manifest to CBP) for manifest data and determined that the general cargo data in AMS are not suitable to accommodate the detailed information requirements of section 801(m) of the act. For example, AMS does not collect the country of origin. In addition, its collection of the identities of the article of food and its manufacturer differs from the way those are collected under the prior notice interim final and final rules in such a way that the data would not meet our needs in carrying out the purpose of section 801(m) of the act. Therefore, the information collection burden may not necessarily be reduced as the comment suggests because manifest data could

not substitute for certain prior notice requirements.

(Comment) Another comment suggested that both the FDA and CBP systems be simplified to more efficiently enter data that are common to all products in the shipment. For instance, information such as importer and shipper, which is common to all products in a shipment, should only need to be entered once.

(Response) The Bioterrorism Act requires notice for each article of food and requires in that notice, for each article of food, certain information. As stated in the interim final rule, an ''article'' refers to a single food that is associated with the same complete FDA Product Code, the same package size, and the same manufacturer or grower (68 FR 58974 at 59003). This is consistent with how entry is filed with CBP. An article of food is a unique item related to a specific manufacturer or grower and a specific process or size. All of these pieces of information are critical for a risk-based assessment of the food. The ABI/ACS system provides the capability to submit information for multiple food items as lines in a single entry, when entry level information is consistent for a number of articles in a shipment. For example, shipment level information, such as estimated time of arrival, can be captured once for all articles within a shipment. The ability to minimize data entry by copying specific information from one article, or line, to another depends upon the sophistication of the software being used by the submitter to create the submission to CBP. The FDA PN System Interface allows for simplified submission of similar articles of food by allowing the submitter to easily repeat common information (e.g., FDA product code, manufacturer, etc.) while entering different quantities (e.g., amount and package size). Both systems thus significantly reduce the amount of repetitive entry.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section No.	FDA Form No.	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
Prior Notice Submissions						
Prior Notice submitted through ABI/ACS						
1.280 to 1.281	None	6,500	949.50	6,171,750	0.167	1,030,682[2]
Prior Notice submitted through PN System Interface						
1.280 to 1.281	FDA 3540[3]	214,400	8.33	1,785,952	0.384	685,806
New Prior Notice Submissions Subtotal						1,716,488
Prior Notice Cancellations						
Prior Notice cancelled through ABI/ACS						
1.282	FDA 3540	6,500	3.34	21,710	0.25	5,428
Prior Notice cancelled through PN System Interface						
1.282 and 1.283(a)(5)	FDA 3540	214,400	0.31	66,464	0.25	16,616
Prior Notice Cancellations Subtotal						22,044
Prior Notice Requests for Review and Post-hold Submissions						
1.283(d) and 1.285(j),	None	1	1	1	8	8
1.285(i)	None	1	1	1	1	1
Prior Notice Requests for Review and Post-hold Submissions Subtotal						9
Total Hours Annually						1,738,541

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

[2]To avoid double-counting, an estimated 396,416 burden hours already accounted for in the Importer's entry notice information collection approved under OMB control number 0910–0046 are not included in this total.

[3]The term ''Form FDA 3540'' refers to the electronic system known as the FDA PN System Interface, which is available at *http://www.access.fda.gov*.

This estimate is based on FDA's experience and the average number of prior notice submissions, cancellations, and requests for review received in the past 3 years.

FDA received 282,244 prior notices through ABI/ACS during December 2003; 6,865,722 during 2004; and 6,171,939 during 2005. Based on this experience, FDA estimates that approximately 6,500 users of ABI/ACS will submit an average of 949.5 prior notices annually, for a total of 6,171,750 prior notices received annually through ABI/ACS. FDA estimates the reporting burden for a prior notice submitted through ABI/ACS to be 10 minutes, or 0.167 hours, per notice, for a total burden of 1,030,682 hours. This estimate takes into consideration the burden hours already counted in the information collection approval for FDA's importer's entry notice, as previously discussed in this document.

FDA received 35,308 prior notices through the PN System Interface during December 2003; 1,425,825 during 2004; and 1,786,896 during 2005. Based on this experience, FDA estimates that

approximately 214,400 registered users of the PN System Interface will submit an average of 8.33 prior notices annually, for a total of 1,785,952 prior notices received annually through the PN System Interface. FDA estimates the reporting burden for a prior notice submitted through the PN System Interface to be 23 minutes, or 0.384 hours, per notice, for a total burden of 685,806 hours.

FDA received no cancellations of prior notices through ABI/ACS during December 2003; 16,624 during 2004; and 21,720 during 2005. Based on this experience, FDA estimates that approximately 6,500 users of ABI/ACS will submit an average of 3.34 cancellations annually, for a total of 21,710 cancellations received annually through ABI/ACS. FDA estimates the reporting burden for a cancellation submitted through ABI/ACS to be 15 minutes, or 0.25 hours, per cancellation, for a total burden of 5,428 hours.

FDA received 1,539 cancellations of prior notices through the PN System Interface during December 2003; 64,918 during 2004; and 65,491 during 2005. Based on this experience, FDA estimates that approximately 214,400 registered users of the PN System Interface will submit an average of 0.31 cancellations annually, for a total of 66,464 cancellations received annually through the PN System Interface. FDA estimates the reporting burden for a cancellation submitted through the PN System Interface to be 15 minutes, or 0.25 hours, per cancellation, for a total burden of 16,616 hours.

FDA has not received any requests for review under §§ 1.283(d) or 1.285(j) in the last 3 years (December 2003 through 2005); therefore, the agency estimates no more than one request for review will be submitted annually. FDA estimates that it will take a requestor about 8 hours to prepare the factual and legal information necessary to prepare a request for review. Thus, FDA has estimated a total reporting burden of 8 hours.

FDA has not received any post-hold submissions under § 1.285(i) in the last 3 years (December 2003 through 2005); therefore, the agency estimates no more than one post-hold submission will be submitted annually. FDA estimates that it will take about 1 hour to prepare the written notification described in § 1.285(i)(2)(i). Thus, FDA has estimated a total reporting burden of 1 hour.

In cases where a regulation implements a statutory information collection requirement, only the additional burden attributable to the regulation, if any, has been included in FDA's burden estimate.

Dated: December 13, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–21737 Filed 12–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0478]

Marketed Unapproved Drugs; Public Workshop; Change of Meeting Location and Time

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a change of location and time for the upcoming public workshop on marketed unapproved drugs. Registration for the public workshop is closed. A new address and time are given for those persons who have previously registered with FDA.

DATES: The public workshop will be held on January 9, 2007, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The public workshop will be held in the Universities at Shady Grove, Conference Center Auditorium, bldg. 1, 9640 Gudelsky Dr., Rockville, MD. Directions and information on parking, hotels, and transportation options can be found at *http://www.shadygrove.umd.edu/conference*. The agenda for the workshop will be posted at *http://www.fda.gov/cder/drug/unapproved_drugs*.

FOR FURTHER INFORMATION CONTACT: Karen Kirchberg, Center for Drug Evaluation and Research (HFD–330), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–8916, e-mail: *Karen.Kirchberg@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 1, 2006 (71 FR 64284), FDA issued a notice announcing a public workshop on issues related to the application process for seeking approval for marketed unapproved drugs. The November 1, 2006, notice invited individuals interested in attending the workshop to register and submit topics for discussion by November 15, 2006. Registration for the workshop is closed. Attendance at the workshop is limited to those persons who have previously registered with FDA.

Because of a greater than anticipated response for attending the public workshop, FDA is announcing in this notice a new location and time.

II. New Location and Time for the Public Workshop

The new location will be the Universities at Shady Grove, Conference Center Auditorium (see **ADDRESSES**). Directions and information on parking, hotels, and transportation options can be found at *http://www.shadygrove.umd.edu/conference*. The new time will be 8:30 a.m. to 4:30 p.m.

Dated: December 14, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–21738 Filed 12–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Production, Recovery and Purification Process for Plasmid DNA Clinical Manufacturing

Description of Technology: Available for licensing from NIH is a method for large scale production, recovery, and purification process for plasmid DNA manufacturing meeting human clinical trial requirements. DNA plasmid

recovery and purification methods can separate plasmid from contamination from a variety of sources including cellular debris and proteins as well as genomic DNA and RNA. Traditionally, DNA plasmid recovery methods utilizing column chromatography have had poor results such as product elutes with broad smears rather than sharp peaks, product elutes appearing in the flow through thereby preventing isolation from lysate components, and monomeric supercoiled plasmids are not separated from other forms of plasmids. To overcome these shortcomings, a fermentation, recovery, purification, and formulation process for the production of plasmid has been developed. The overall recovery of this process is greater than 400 mg of formulated final product per kilogram (wet weight) of E. coli cell paste.

Applications: (1) Produce clinical grade plasmid DNA for clinical trials; (2) Therapeutic reagents.

Market: This technology has potential uses in drug manufacturing and clinical studies. In the United States alone, there were approximately over 40,000 clinical trials conducted. The potential market is worth several billion dollars.

Inventors: Yueqing Xie *et al.* (NCI/SAIC).

Related Publications:

1. N Horn *et al.* U.S. Patent No. 5,707,812, Purification of plasmid DNA during column chromatography.

2. R Lemmens *et al.* Supercoiled plasmid DNA: selective purification by thiophilic/aromatic adsorption. J Chromatogr B Analyt Technol Biomed Life Sci. 2003 Feb 5;784(2):291–300.

3. J Urthaler *et al.* Application of monoliths for plasmid DNA purification development and transfer to production. J Chromatogr A 2005 Feb 11;1065(1):93–106.

Patent Status: HHS Reference No. E–033–2007/0—Research Tool.

Licensing Status: This technology is available as a non-exclusive license.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute—Frederick is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize A Production, Recovery and Purification Process for Plasmid DNA Clinical Manufacturing. Please contact Betty Tong, PhD at *tongb@mail.nih.gov* for more information.

Chitosan as a Universal Vaccine Adjuvant, Antigen Depot and Cytokine Depot

Description of Technology: This technology describes the use of chitosan depots with appropriate antigens and/or cytokines for generating an immune response in a subject. Such depots are made by mixing one or more antigens and/or cytokines with chitosan or a chitosan derivative. Similar compositions are described wherein chitosan or a derivative forms a micro- or nanoparticle, which have resulted in a more immunogenic presentation of antigen compared to antigen in solution. Using a representative antigen, the inventors showed that mice vaccinated with the subject depots had increased humoral and cellular immune responses compared to mice vaccinated with antigen alone.[1] Furthermore, comparative mouse studies showed the antigen-specific immune response generated with chitosan depots of this invention to be equipotent to incomplete Freund's adjuvant (IFA) and superior to aluminum hydroxide, a widely used adjuvant for licensed and routinely administered vaccines.[1] Thus, this technology improves upon commonly used adjuvant technology and is widely applicable. This technology is the first to show that subcutaneous administrations of chitosan and an appropriate antigen, with no other component, can be used for enhancing immune responses. In additional studies, the inventors showed that chitosan is able to maintain a depot of recombinant cytokine. A single subcutaneous injection of chitosan-cytokine outperforms daily injections of recombinant cytokine in both the expansion of draining lymph nodes and in the antigen presenting ability of lymph node cells. This technology is the first to show that chitosan can maintain a depot of cytokine which results in a significant enhancement of the functional effects of a cytokine. This technology can be used for vaccines and immunotherapies against various infectious agents and cancer.

Applications: Vaccine adjuvant; Immunogenic depots, including vaccine and cytokine.

Development Status: Animal (mouse) data available.

Inventor: Jeffrey Schlom *et al.* (NCI).

Reference: [1] DA Zaharoff, CJ Rogers, KW Hance, J Schlom, JW Greiner. Chitosan solution enhances both humoral and cell-mediated immune responses to subcutaneous vaccination. Vaccine (accepted November 2006).

Patent Status: U.S. Provisional Application No. 60/846,481 filed 22 Sep 2006 (HHS Reference No. E–311–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Ano, PhD; 301/435–5515; *anos@mail.nih.gov*

Collaborative Research Opportunity: The NCI Laboratory of Tumor Immunology and Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize chitosan-mediated immunopotentiation of vaccines and immunotherapies. Please contact Betty Tong, PhD at 301–594–4263 or *tongb@mail.nih.gov* for more information.

Preparative Two Dimensional Gel Electrophoresis System

Description of Technology: The National Institute of Environmental Health Sciences has developed procedures and a prototype device for isolation of proteins from complex mixtures for protein identification. The system serves as a one-step purification method for isolation of biologically relevant proteins affected by disease or experimental treatment and has been described in *Electrophoresis* 15, 735–745, 1994. The system includes a preparative isoelectric focusing device for separation of proteins by charge, a glass mold for preparative polyacrylamide gel separation by mass and a protocol for use.

The commercial advantage of the Preparative Two Dimensional Gel Electrophoresis system is to separate and isolate sufficient amounts of individual protein for sequencing in a powerful one-step purification method. The Preparative Two Dimensional Gel Electrophoresis system can resolve individual proteins by charge and mass from up to 1 to 2 mg of unpurified starting material from protein mixtures. Current devices for two dimensional gel electrophoresis are generally for analytical scale work and are not physically or procedurally adapted to accommodate preparative sample loads. Although other preparative electrophoresis devices do exist, they separate by either mass or charge alone and function as stand-alone units without ready integration into additional systems for resolution of individual proteins.

Applications: Protein sequencing, protein immunization for antibody production, immunostaining and other modes of protein characterization.

Development Status: The system has been tested and is operational; however

some refinements in protein resolution are still possible which may involve procedural, reagent or equipment modifications.

Inventors: B. Alex Merrick (*NIEHS*), Rachel Patterson (NIEHS), Robert Hall (NIEHS), Chaoying He (NIEHS), James Selkirk (NIEHS).

Publication: BA Merrick, RM Patterson, LL Witcher, C He, JK Selkirk. Separation and sequencing of familiar and novel murine proteins using preparative two-dimensional gel electrophoresis. *Electrophoresis.* 1994 May;15(5):735–745.

Patent Status: U.S. Patent No. 5,534,121 issued 09 July 1996, claiming priority to 16 May 1994 (HHS Reference No. E–066–1994/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Michael A. Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The NIEHS National Center for Toxicogenomics, Proteomics Group, may consider statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this preparative two-dimensional gel electrophoresis system. Please contact John Penta, NIEHS Office of Translational Research, at 919/541–3696 or *penta@niehs.nih.gov* for additional information.

Dated: December 8, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–21665 Filed 12–19–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Method of Immunizing Humans Against Salmonella Typhi Using a Vi-rEPA Conjugate Vaccine

Description of Technology: This invention is a method of immunization against typhoid fever using a conjugate vaccine comprising the capsular polysaccharide of *Salmonella typhi,* Vi, conjugated through an adipic dihydrazide linker to nontoxic recombinant exoprotein A (rEPA) from *Pseudomonas aeruginosa.* The three licensed vaccines against typhoid fever, attenuated *S. typhi* Ty21a, killed whole cell vaccines and Vi polysaccharide, have limited efficacy, in particular for children under 5 years of age, which make an improved vaccine desirable.

It is generally recognized that an effective vaccine against *Salmonella typhi* is one that increases serum anti-Vi IgG eight-fold six weeks after immunization. The conjugate vaccine of the invention increases anti-Vi IgG, 48-fold, 252-fold and 400-fold in adults, in 5–14 years old and 2–4 years old children, respectively. Thus this is a highly effective vaccine suitable for children and should find utility in endemic regions and as a traveler's vaccine. The route of administration can also be combined with routine immunization. In 2–5 years old, the protection against typhoid fever is 90% for 4 years. In school age children and in adults the protection could mount to completer protection according to the immunogenicity data.

Application: Immunization against *Salmonella typhi* for long term prevention of typhoid fever in all ages.

Developmental Status: Conjugates have been synthesized and clinical studies have been performed. The synthesis of the conjugates is described by Kossaczka *et al.* in Infect Immun. 1997 June;65(7):2088–2093. Phase III clinical studies are described by Mai *et al.* in N Engl J Med. 2003 October 2; 349(14):1390–1391. Dosage studies are described by Canh *et al.* in Infect Immun. 2004 Nov;72(11):6586–6588.

A safety and immunogenicity study in infants are underway. The aim is to administer the conjugate vaccine with routine infant immunization. Preliminary results shows the vaccine is safe in 2 months old infants.

Inventors: Zuzana Kossaczka, Shousun C. Szu, and John B. Robbins (NICHD).

Patent Status: U.S. Patent 6,797,275 issued 28 Sep 2004 (HHS Reference No. E–020–1999/0–US–02); U.S. Patent Application No. 10/866,343 filed 10 Jun 2004 (HHS Reference No. E–020–1999/0–US–03).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Child Health and Human Development, Laboratory of Developmental and Molecular Immunity, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize A Method of Immunizing Humans Against Salmonella Typhi Using a Vi-rEPA Conjugate Vaccine. Please contact Betty Tong, PhD at 301–594–4263 for more information.

Vaccine Against *Escherichia Coli* O157 Infection, Composed of Detoxified LPS Conjugated to Proteins

Description of Technology: This invention is a conjugate vaccine to prevent infection by *E. coli* O157:H7, particularly in young children under 5 years of age. *E. coli* O157:H7 is an emerging human pathogen which causes a spectrum of illnesses with high morbidity and mortality, ranging from diarrhea to hemorrhagic colitis and hemolytic-uremic syndrome (HUS). Infection with *E. coli* O157:H7 occurs as a result of consumption of water, vegetables, fruits or meat contaminated by feces from infected animals, such as cattle. The most recent large outbreak in the U.S. was from contaminated bag spinach. The conjugate is composed of the O-specific polysaccharide isolated from *E. coli* O157, or other Shiga-toxin producing bacteria, conjugated to carrier proteins, such as non-toxic *P. aeruginosa* exotoxin A or Shiga toxin 1. A Phase I clinical trial, involving adult humans, showed the vaccine is safe and highly immunogenic. Adults, after one injection containing 25 μg of antigen, responded with high titers of bactericidal antibodies. Similarly in a phase II study, fifty 2 to 5 years-old children in U.S. were injected with the conjugate vaccines. There were only mild local adverse reactions. More than 90% children responded with greater than 10 fold rise of *E. coli* O157 antibodies of bactericidal ability. Thus the conjugates of the invention are

promising vaccines, especially for children and the elderly, who are most likely to suffer serious consequences from infection.

Application: Prevention of *E. coli* O157 infection.

Development Status: Clinical studies have been performed and are described in Konadu *et al.*, J Infect Dis. 1998 Feb;177(2):383–387 and Ahmed *et al.*, J Infect Dis. 2006 Feb;193(2):515–526.

Inventors: Shousun C. Szu, Edward Konadu, and John B. Robbins (NICHD).

Patent Status: U.S. Patent 6,858,211 issued 22 Feb 2005 (HHS Reference No. E–158–1998/0–US–06); U.S. Patent Application No. 10/987,428 filed 12 Nov 2004 (HHS Reference No. E–158–1998/0–US–07).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Child Health and Human Development, Laboratory of Developmental and Molecular Immunity, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Vaccine for *E. coli* O157 for Children and Adults. Please contact Betty Tong, PhD at 301–594–4263, *tongb@mail.nih.gov* for more information.

Dated: December 8, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–21666 Filed 12–19–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of 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 National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, 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.

A portion of 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/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: February 2, 2007.

Closed: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 1 p.m. to 4:30 p.m.

Agenda: Opening remarks by the Acting Director of National Center for Complementary and Alternative Medicine, presentations of new research initiatives, and other council related business.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Rooms C & D, Rockville, MD 20852.

Contact Person: Martin H. Goldrosen, Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. (301) 594–2014.

The public comments session is scheduled from 4–4:30 p.m., but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Martin H. Goldrosen, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on January 31, 2007. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (February 12, 2007) following the meeting.

Copies of the meeting agenda and roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax 301–480–9970, or via e-mail at *naccames@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: December 13, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9773 Filed 12–19–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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 meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, 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.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 29, 2007.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director and the Director of Center for Scientific Research.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, Extramural Science Administrator for Special

Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 29, 2007.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms A, Bethesda, MD 20892.

Open: 1 p.m. to 4:30 p.m.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: January 29, 2007.

Open: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to 4:30 p.m.

Agenda: Report from the Division Director and other staff reports.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: January 29, 2007.

Closed: 9 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to 4 p.m.

Agenda: Report from the Division Director and other staff reports.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: May 21, 2007.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director and the Director, NIAID Vaccine Research Center.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: May 21, 2007.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to 4:30 p.m.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: May 21, 2007.

Time: 9 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to 4 p.m.

Agenda: Report from the Division Director and other staff reports.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Disease Council; Microbiology and Infectious Diseases Subcommittee.

Date: May 21, 2007.

Time: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to 4:30 p.m.

Agenda: Report from the Division Director and other staff reports.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 17, 2007.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director and the Director, NIAID, Division of Intramural Research.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; acquired Immunodeficiency Syndrome Subcommittee.

Date: September 17, 2007.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to 4:30 p.m.

Agenda: Program advisory discussions and reports from division staff.

Place: Natiional Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge

Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: September 17, 2007.

Closed: 9 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to 4 p.m.

Agenda: Report from the Division Director and other staff reports.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30@nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: September 17, 2007.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to 4:30 p.m.

Agenda: Report from the Division Director and other staff report.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Paula S. Strickland, PhD, Extramural Science Administrator for Special Projects, International Extramural Activities, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–435–8563. *ps30f@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niaid.nih.gov/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 13, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9774 Filed 12–19–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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 meetings of the AIDS Research Advisory Committee, NIAID.

The meetings 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: AIDS Research Advisory Committee, NIAID.

Date: January 29, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: Report from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601. 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: May 21, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: Report from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601. 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 17, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: Report from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601. 301–435–3732.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 13, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9775 Filed 12–19–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Immunoconjugates Having High Binding Affinity

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent No. 7,081,518, issued July 25, 2006, entitled ''Anti-Mesothelin Antibodies Having High-Affinity Binding'' [E–139–1999/0–US–07]; European Patent Application No. 00937925.6, filed May 26, 2000, entitled ''Immunoconjugates Having High Binding Affinity'' [E–139–1999/0–EP–04]; Japanese Patent Application No. 2001–500670, filed May 26, 2000, entitled ''Immunoconjugates Having High Binding Affinity'' [E–139–1999/0–JP–05]; Mexican Patent Application No. PA/a/2001/01195, filed May 26, 2000, entitled ''Immunoconjugates Having High Binding Affinity'' [E–139–1999/0–MX–06]; and Canadian Patent Application No. 2374398, filed May 26, 2000, entitled ''Immunoconjugates Having High Binding Affinity'' [E–139–1999/0–CA–03] to Cambridge Antibody Technology, Ltd., which has offices in Cambridge, United Kingdom. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the use of the SSIP immunoconjugate and variants thereof for the treatment of mesothelin expressing cancers.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before February 20, 2007 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Jesse S. Kindra, J.D., M.S., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5559; Facsimile: (301) 402–0220; E-mail: *kindraj@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: This technology relates to an improved anti-mesothelin antibody (SS1) based on affinity maturation, which involves somatic hypermutation of the variable region. The technology also includes additional antibody variants other than SS1.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 12, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–21667 Filed 12–19–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[OMB Control Number: 1651–0101]

Submission for Review; Reinstatement Previously Discontinued Information Collection Request for the Fiscal Year 2003 State Domestic Preparedness Program

AGENCY: Preparedness Directorate, National Preparedness Task Force, DHS.

ACTION: Notice; 30-day notice of information collections under review: Reinstatement Previously Discontinued Information Collection Request for the Fiscal Year 2003 State Domestic Preparedness Program.

SUMMARY: The Department of Homeland Security (DHS) has submitted the following information collection request (ICRs) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Action of 1995: 1600–0002, 1600–0003, 1600–0004, 1600–0005. The information collections were previously published in **Federal Register** on October 12, 2006 allowing for OMB review and a 60-day public comment period. No Comments were received by DHS.

The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 19, 2007 (Automatically tabulated by FR). This process is conducted in accordance with 5 CFR 1320.10.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Preparedness, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

The Office of Management and Budget is particularly interested in comments which:

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

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

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by calling Nathan Lesser, Desk Officer, Department of Homeland Security Washington, DC 20528; and sent via electronic mail to *oira_submission@omb.eop.gov* of faxed to (202) 395–6974 (this is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Analysis

Agency: Department of Homeland Security, Preparedness Directorate, National Preparedness Task Force.

Title: Fiscal Year 2003 State Domestic Preparedness Program.

OMB No.: 1651–0101.

Frequency: On occasion.

Affected Public: Primary, State, Local and Tribal Government.

Estimated Number of Respondents: 2,059 respondents.

Estimated Time Per Respondent: .33 hour per response.

Total Burden Hours: 679.47.

Total Burden Cost: (capital/ Startup): None.

Total Burden Cost: (operating/ maintaining): None.

Description: This data collection will allow states to: (1) Report current jurisdictional needs for equipment, training, exercises and technical assistance; (2) forecast projected needs for this support and (3) identify the gaps that exist at the jurisdictional level in equipment, training and technical assistance that NPTF and other federal agencies in to the formulation of in the formulation of domestic preparedness policies and with the development of programs to enhance state and local first responder capabilities.

Charlie Church,

Chief Information Officer, Preparedness Directorate, Department of Homeland Security.

[FR Doc. 06–9789 Filed 12–19–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Publication of Privacy Impact Assessments.

SUMMARY: The Privacy Office of the Department of Homeland Security is making available five Privacy Impact Assessments on various programs and systems in the Department. These assessments were approved and published on the Privacy Office's Web site between October 1, 2006 and October 31, 2006.

DATES: The Privacy Impact Assessment will be available on the DHS Web site until February 20, 2007, after which it may be obtained by contacting the DHS Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528; by telephone (571) 227–3813, facsimile (866) 466–5370, or e-mail: *pia@dhs.gov.*

SUPPLEMENTARY INFORMATION: Between October 1, 2006 and October 31, 2006, the Chief Privacy Officer of the Department of Homeland Security (DHS) approved and published five Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, *http://www.dhs.gov/privacy*, under the link for ''Privacy Impact Assessments.'' These PIAs cover five separate DHS programs. Below is a short summary of each of those programs, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

1. Background Check Service

Citizenship and Immigration Services

October 31, 2006: The United States Citizenship and Immigration Services (USCIS) is developing the Background Check Service (BCS) to help streamline the established USCIS background check process. As part of the adjudication process, USCIS conducts three different background checks on applicants/petitioners applying for USCIS benefits. These include (1) a Federal Bureau of Investigation (FBI) Fingerprint Check, (2) a FBI Name Check and (3) a Customs and Border Protection (CBP) Treasury Enforcement Communication System/Interagency Border Inspection System (TECS/IBIS) Name Check. Prior to BCS, information relating to the FBI Fingerprint Checks and the FBI Name Checks was stored in two different systems. Information relating to the TECS/IBIS Name Checks was not stored in any system. BCS will be the central repository for all activity related to these background checks.

2. MAXHR Solution Component ePerformance System Update

Management

October 13, 3006: The update is to acknowledge a new version due to a new DHS-specific System of Records Notice, MaxHR ePerformance Management System DHS/OCHCO–001, that is being published in the **Federal Register** in order to provide additional transparency to DHS employees regarding the program.

3. Electronic Travel Document

Immigration and Customs Enforcement

October 17, 2006: The Electronic Travel Document System (eTD) will maintain personal information regarding aliens who have been ordered removed or have been removed from the United States. The eTD will also maintain information on U.S. government employees and foreign consular officials required to access the system. The eTD system will present and share alien information with the foreign consular officials and associated governments for their use in the expedited issuance of travel documents.

4. Personal Identity Verification (PIV) HSPD 12

Management

October 13, 2006: Homeland Security Presidential Directive 12 (HSPD–12), issued on August 27, 2004, required the establishment of a standard for identification of Federal Government employees and contractors. HSPD–12 directs the use of a common identification credential for both logical and physical access to federally controlled facilities and information systems. This initiative is intended to enhance security, increase efficiency, reduce identity fraud, and protect personal privacy.

5. Natural Disaster Medical System

Federal Emergency Management Agency

October 13, 2006: The National Disaster Medical System Medical Professional Credentials (NDMS) provides health services, health-related social services, other appropriate human services, and appropriate auxiliary services including mortuary and veterinary medical services in times of national emergency. NDMS also allows providers to respond to the needs of victims of a public health emergency or other public emergency, as defined in 42 U.S.C. 300hh–11(b)(3)(A). The NDMS program collects and maintains personally identifiable information in order to hire and retain qualified medical professionals and other professionals that can be activated and deployed in times of emergency.

Dated: December 12, 2006.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E6–21751 Filed 12–19–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Publication of Privacy Impact Assessments.

SUMMARY: The Privacy Office of the Department of Homeland Security is making available three Privacy Impact Assessments on various programs and

systems in the Department. These assessments were approved and published on the Privacy Office's Web site between November 1, 2006 and November 30, 2006.

DATES: The Privacy Impact Assessments will be available on the DHS Web site until February 20, 2007, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528; by telephone (571) 227–3813, facsimile (866) 466–5370, or e-mail: *pia@dhs.gov.*

SUPPLEMENTARY INFORMATION: Between November 1, 2006 and November 30, 2006, the Chief Privacy Officer of the Department of Homeland Security (DHS) approved and published three Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, *http://www.dhs.gov/privacy*, under the link for ''Privacy Impact Assessments.'' These PIAs cover three separate DHS programs. Below is a short summary of those programs, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

1. CBP Automatic Targeting System

Customs and Border Protection

November 22, 2006: Department of Homeland Security, Customs and Border Protection (CBP), has developed the Automated Targeting System (ATS). ATS is one of the most advanced targeting systems in the world. Using a common approach for data management, analysis, rules-based risk management, and user interfaces, ATS supports all CBP mission areas and the data and rules specific to those areas. This PIA was prepared in conjunction with the System of Records Notice that was published on November 2, 2006 in the **Federal Register**.

2. Global Enrollment System

Customs and Border Protection

November 1, 2006: This is an update to the previous Global Enrollment System PIA, dated April 20, 2006. It was prepared in order to include a description and analysis of the Global On-Line Enrollment System, which is the new online application process for enrollment in Customs and Border Protection trusted traveler programs. With the new system, CBP will be able to offer an on-line enrollment process to prospective and existing members of GES programs.

3. United States Coast Guard ''Biometrics at Sea'' Mona Passage Proof of Concept

U.S. Coast Guard

November 3, 2006: This PIA describes the U.S. Coast Guard (USCG) and U.S. Visitor and Immigrant Status Indicator Technology (US–VISIT) Program partnership. The partnership is in furtherance of the broader objective to develop mobile biometric capabilities for the Department of Homeland Security (DHS). The findings from this proof of concept will be used to develop and refine technologies needed for mobile biometrics collection and analysis capability at sea, along with other remote areas where DHS operates. The technologies developed through this proof of concept will assist in the apprehension and prosecution of illegal migrants and migrant smugglers. They will also deter unsafe and illegal maritime migration, which will help preserve life at sea. The USCG deployed the at-sea biometric capability during the operational Proof of Concept (POC) in November 2006.

Dated: December 12, 2006.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E6–21752 Filed 12–19–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24068]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0003

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) to request an extension of their approval of the following collection of information. The ICR is 1625–0003, Coast Guard Boating Accident Report Form (CG–3865). Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before January 19, 2007.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2006–24068] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 or by contacting (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov.* (b) By e-mail to *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 1236 (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents; or Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICRs addressed. Comments to DMS must contain the docket number of this request, [USCG 2006–24068]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the January 19, 2007.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2006–24068], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments.

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (71 FR 12378, March 10, 2006) required by 44 U.S.C. 3506(c)(2). That notice elicited comments from a firm that provides services in the analysis and design of automotive and marine products (''industry''), and from a state environmental protection agency (''State agency''). These comments requested a substantive revision to the CG–3865 report form.

The comments made recommendations to enhance the quality, utility and clarity of the information that is subject to the collection. Comments concerned the terminology used in the current Coast Guard Boating Accident Report Form (CG–3865) lacks clarity to such an extent, it likely makes it difficult for a vessel operator/owner to complete the form as required by 33 CFR 173.55. As currently designed for use by ''the operator/owner of a vessel,'' some terminology used in the report form could be unclear or unknown by the reporting individual. Additionally, it was stated that designing the accident report form for an operator/owner while at the same time taking into consideration the use of the form by law enforcement officials means the report form has evolved into an instrument that does not adequately address the distinct needs and knowledge level of law enforcement or the operator/owner. We concur that some revisions are needed to improve the CG–3865 report form for accuracy and thoroughness of the information subject to the collection as prescribed by Federal regulations, but we did not agree with all of the suggested changes.

Two issues related to potential rulemaking arose during our review of comments. First, the industry commenter has recommended that we amend the reporting provisions of 33 CFR 173.55(a) and (c) as soon a possible to include law enforcement officers, instead of just vessel operators or owners, as persons who may complete accident reports. We have treated this portion of industry's comment as a petition for rulemaking and have forwarded it to the Executive Secretary of the Marine Safety and Security Committee in accordance with 33 CFR 1.05–20, Petitions for rulemaking. We only note here that § 173.55 identifies who must submit—not who must complete—the report.

Second, while examining the form in response to comments, we noted a requirement in paragraph (w) of 33 CFR 173.57 (Contents of Report). Specifically, paragraph (w) requires the collection of vessel beam width at widest point and depth from transom to keel. This information is not solicited by the current form. Because it is required by paragraph (w), we have added this item to the revised form. We plan to re-examine this paragraph, particularly in light of requirements for the display of capacity information and a standard for safe loading in 33 CFR part 183, subparts B and C, respectively, to see if a revision in this regulation is warranted. The omission of this beam and transom solicitation in the current form may reflect that it has become impractical to collect this information from vessel operators/owners. After re-examining the usefulness of this information, we may decide a rulemaking is warranted to change the underlying requirement in § 173.57, but we can not eliminate the place to enter this information on the CG–3865 report form while this information is still required.

In response to submitted comments, the CG–3865 report form has been revised to eliminate terms and data elements where: (1) The practicality of collecting the information from vessel operators/owners is unrealistic and (2) the information is of limited value in supporting the strategies and objectives of the national Recreational Boating Safety (RBS) Program. The following is a summary of comments submitted within the scope of the solicitation that pertain specifically to the information collection request published in the **Federal Register** (71 FR 12378) on March 10, 2006.

Industry Comments

Comments submitted by industry focused on the practical utility of the

collection as well as ways to enhance the quality and clarity of the information subjected to collection. The firm noted the current CG–3865 form lacks not only clarity, but a definition of terms which could make it difficult for a vessel operator/owner to complete. The firm also commented that we should consult with their stakeholders to correct the structural and content deficiencies of the report form. We concur with these comments and have recently evaluated information captured by the CG–3865 report form in consultation with the National Association of State Boating Law Administrators (NASBLA). NASBLA is comprised of Boating Law Administrators (BLAs) representing the fifty States, five U.S. Territories, and the District of Columbia, who by regulation, serve as the reporting authorities for their respective jurisdiction.

We do not concur with the comment that the CG–3865 report form is not in compliance with 33 CFR 173.55 (a) and (c). While appropriate State reporting authorities may assist appropriate individuals in the proper filing of the report, the report form and manner of reporting is in compliance with Federal regulations.

We concur that the CG–3865 report form includes technical information that lacks clarity and definition of terms that a lay person may not be able to respond to in a manner as prescribed by regulations. In response, we have made substantive revisions to the CG–3865 report form in an attempt to capture accurate information from individuals who are required to file the report. For example, the following terms have been eliminated: ''Inherently buoyant,'' ''Tertiary,'' ''Whitewater boating,'' ''Off-throttle steering,'' and ''Runaway boat.'' And explanatory text has been provided for the following abbreviations: *VSC* [vessel safety check], *BUI* [boating under the influence], and *PFD* [personal floatation device].

In response to the comment for providing instructions for the vessel operator/owner to describe information for the overall accident as well as information for the specific vessel they were operating, we have included explanatory text in the headings of each section of the report form. Additionally, the structure of the boating accident report database file has been modified to reflect the manner of reporting for the overall accident as well as for the specific vessel(s) involved in the accident.

We appreciate the recommendations submitted by industry for improving the quality of data captured by the accident report form. By revising the report form as recommended, we believe accident data is more accurately reported and subsequently captured in our boating accident report database file at the proper levels of causality and description. We believe the data and associated statistical information generated by the revised form will better show the factors—environmental, operator, and vessel—associated with boating accidents.

State Agency Comments

Comments submitted by the State agency focused on modifying the CG–3865 report form to clarify certain information. In response to these State agency comments:

1. We have modified the form to make it evident the information is required by the Coast Guard as prescribed by current federal regulations. We include in our explanatory text that State reporting authorities may require reports involving only damage to vessels and other property that is less than $2,000.

2. We concur that the most important information to collect regarding a VSC is when the vessel has been involved in an accident. The form has been modified to capture whether the respective vessels involved in accidents had current VSC decals.

3. We have clarified that information requested for a BUI arrest is specifically for the vessel operator involvement in the accident that is subject to the report, and not in reference to any prior BUI arrests.

4. Due to the limited practicality of collecting accurate engine serial number information from vessel operators/owners, serial number information has been eliminated from the revised CG–3865 report form.

5. The term ''cruising'' remains in the list of values associated with the operation of the vessel at the time of the accident.

6. The term ''sudden medical condition'' (heart attack, stroke, etc.) has been added to the list of contributing factors for an accident.

7. ''Auxiliary equipment failure'' now provides an example of such an occurrence (*e.g.*, generator failure).

8. The entire ''Accident Descriptors'' section has been eliminated. However, ''collision with a commercial vessel'' has been added to the list for ''Types of Accidents.''

9. The section requesting the ''estimated number of days the vessel was used this year,'' the ''typical number of hours the vessel was used each day this year,'' and the ''typical number of persons on board the vessel used each day this year'' has been eliminated from the report form.

10. In regard to the section of the report entitled, ''Other People on Board this Vessel,'' we concur with the removal of the last question asking for information on whether operators of the other vessels involved in the accident completed their reports. Individuals completing the form for their respective vessel typically would not know that same type of information for other vessels involved in the accident. In response, the ''Other People on Board this Vessel'' section has been eliminated.

11. In the section entitled ''Witnesses not on this Vessel,'' we have modified the title to include witnesses for the overall accident. We have also corrected the spelling of the word ''separate.''

12. In the section entitled ''For Agency Use Only,'' we have modified the form to capture the primary and secondary causes of the accident in the opinion of the reviewing official.

13. In the section entitled ''Person Completing the Report,'' we have included a response for ''Other'' so the respondent is able to indicate who is submitting the report in case the operator and owner are unable to submit the report as required. In many of these cases, state reporting authority personnel (e.g., investigator) complete the CG–3865 report form to the best of their ability and submit the data to the Coast Guard.

14. The term ''Bruise'' has been placed in parentheses next to the term ''ABRASION/CONTUSION.''

15. The term ''Heart Attack'' has been added to the list of types of injuries and the term ''Other'' has been added to the list of injury causes in the subsection entitled ''Injury Caused By.''

16. ''Victim Activity at the Time of the Accident'' has been modified to be consistent in both the Non-Fatal Injury and Deceased sections of the report form. Since the term ''Cruising'' is appropriately designated as a vessel operation, it will remain listed as an ''Operation at the Time of the Accident.''

We appreciate the comments submitted by the State agency in clarifying the type of information to be submitted by vessel operators/owners using the CG–3865 report form.

Information Collection Request

Title: Coast Guard Boating Accident Report Form (CG–3865).

OMB Control Number: 1625–0003.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of vessels that are being used for recreational purposes or those vessels that are required to be numbered, when as a

result of an occurrence that involves the vessel or its equipment if any one of the following occurs: (1) A person dies; (2) A person is injured and requires medical treatment beyond first aid; (3) Damage to vessels and other property totals $2,000 or more or there is a complete loss of any vessel; or (4) A person disappears from the vessel under circumstances that indicate death or injury. The owner of the vessel shall be the respondent when the operator is unable to serve as such.

Forms: CG–3865.

Abstract: Under the authority of Title 46 U.S.C., including 46 U.S.C. 6102 and 6307, the Coast Guard has been delegated the responsibility to collect, analyze, and publish statistical information obtained from recreational boat numbering and casualty reporting systems. Information collected from Coast Guard Boating Accident Report Form (CG–3865) enables the Coast Guard to fulfill this statutory requirement.

Burden Estimate: The estimated burden has decreased from 3,250 hours to 2,500 hours a year.

Dated: December 13, 2006.

R.T. Hewitt,

Rear Admiral, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–21644 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–26521]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DHS.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2007 minimum random drug testing rate at 50 percent of covered crewmembers.

DATES: The minimum random drug testing rate is effective January 1, 2007 through December 31, 2007. Marine employers must submit their 2006 Management Information System (MIS) reports no later than March 15, 2007.

ADDRESSES: Annual MIS reports may be submitted in writing to Commandant (CG–3PCA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 2404, Washington, DC 20593–0001 or by electronic submission to the following Internet address: *http://www.uscg.mil/hq/g-m/moa/dapip.htm.*

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, Office of Investigations and Analysis (CG–3PCA), U.S. Coast Guard Headquarters, telephone 202–372–1033. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Dockets Operations, Department of Transportation, telephone 202–366–0402.

SUPPLEMENTARY INFORMATION: Under 46 CFR 16.230, the Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels.

Every marine employer is required to collect and maintain a record of drug testing program data for each calendar year, and submit this data by 15 March of the following year to the Coast Guard in an annual MIS report. Marine employers may either submit their own MIS reports or have a consortium or other employer representative submit the data in a consolidated MIS report.

The purpose of setting a minimum random drug testing rate is to assist the Coast Guard in analyzing its current approach for deterring and detecting illegal drug abuse in the maritime industry. The testing rate for calendar year 2006 is 50 percent.

The Coast Guard may lower this rate if, for two consecutive years, the drug test positive rate is less than 1.0 percent, in accordance with 46 CFR 16.230(f)(2).

Since 2005 MIS data indicates that the positive rate is greater than one percent industry-wide (1.45 percent), the Coast Guard announces that the minimum random drug testing rate will continue at 50 percent of covered employees for the period of January 1, 2007 through December 31, 2007 in accordance with 46 CFR 16.230(e).

Each year, the Coast Guard will publish a notice reporting the results of random drug testing for the previous calendar year's MIS data and the minimum annual percentage rate for random drug testing for the next calendar year.

Dated: December 13, 2006.

C.E. Bone,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention.

[FR Doc. E6–21649 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5044–N–23]

Notice of Proposed Information Collection for Public Comment for Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 20, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW. Room 4116, Washington, DC 20410. Interested persons are invited to submit comments regarding this proposal.

FOR FURTHER INFORMATION CONTACT: Aneita L. Waites, (202) 708–0614, extension 4114. (This is not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Services at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of

appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

This Notice also lists the following information:

Title of Proposal: Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) Program.

OMB Control Number: 2577–0178.

Description of the Need for the Information and Proposed Use: The FSS program, which was established in the National Affordable Housing Act of 1990, promotes the development of local strategies that coordinate the use of public housing assistance and assistance under the Section 8 rental certificate and voucher programs (now known as the Housing Choice Voucher Program) with public and private resources to enable eligible families to achieve economic independence and self-sufficiency. Housing agencies consult with local officials to develop an Action Plan; enter into a Contract of Participation with each eligible family that opts to participate in the program; computes an escrow credit for the family, report annually to HUD on implementation of the FSS program, and complete a funding application for the salary of an FSS program coordinator.

Agency form numbers: HUD–52650, HUD–52651, HUD–52652.

Members of the Affected Public: Public housing agencies, State or Local Government.

Estimation including the Total Number of Hours Needed to Prepare the Information Collection for the Number of Respondents, Frequency of response, and hours of response:

Description of information collection	Number of respondents	Responses per year	Total annual responses	Hours per response	Total hours
SF424	750	1	750	0.75	562.5
SF LLL	10	1	10	0.17	1.7
HUD 2880 (OMB no. 2510–0011)	750	1	750	0	*0
HUD 96010 (OMB no. 2535–0114)	750	1	750	0	*0
HUD–2991 Certification	750	1	750	0	*0
HUD–2994–A (OMB no. 2535–0116)	750	1	750	0	*0
FSS Application, HUD–52651	750	1	750	0.75	563
Affirmatively Furthering Fair Housing Statement	750	1	750	.5	375
Subtotal (Application)	750	1	750	2.17	1502.2
Action Plan	5	1	5	40	200
Contract of Participation HUD–52650	750	10	7,500	.25	1,875
Escrow Account Credit Worksheet HUD–52652	750	50	37,500	.85	31,875
Annual Report (Narrative)	750	1	750	1	750
HUD–50058 (OMB no. 2577–0083)	750	50	37,500	0	*0
Subtotal (Program Reporting/Recordkeeping)	750	Varies	45,755	42.1	34,700
Total	750	Varies	46,505	44.27	36,202.2

*Burden hours for forms showing zero burden hours in this collection are reflected in the OMB approval number cited or do not have a reportable burden. The burden hours for this collection have decrease by 3,003.8 hours since the last submission to OMB.

Status of the Proposed Information Collection: Revision of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 15, 2006.

Bessy Kong,

Deputy Assistant Secretary for Policy, Program and Legislative Initiatives.

[FR Doc. E6–21755 Filed 12–19–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Tucker Pond Low Effect Habitat Conservation Plan, Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Doug and Jennifer Ross (Applicants) have applied to the U.S. Fish and Wildlife Service (Service or ''we'') for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We are considering issuing a 10-year permit to the Applicants that would authorize take of the federally endangered Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) and the threatened California red-legged frog (*Rana aurora draytonii*) incidental to otherwise lawful activities associated with the construction of private residential facilities on 16.5 acres of their 99-acre property in Aptos, Santa Cruz County, California.

We are requesting comments on the permit application and on our preliminary determination that the proposed Habitat Conservation Plan (HCP) qualifies as a ''low effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this possible determination in a draft Environmental Action Statement (EAS) and associated Low Effect Screening Form. The Applicants' low effect HCP describes the mitigation and minimization measures they would implement, as required in Section 10(a)(2)(B) of the Act, to address the effects of the project on the Santa Cruz long-toed salamander and California red-legged frog. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The draft HCP and EAS are available for public review.

DATES: Written comments should be received on or before January 19, 2007.

ADDRESSES: Please address written comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Ventura, California 93003. You may also send comments by facsimile to (805) 644–3958. To obtain copies of draft documents, see ''Availability of Documents'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Bill McIver, Fish and Wildlife Biologist, (see **ADDRESSES**) telephone: (805) 644–1766 extension 234.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the application, HCP, and EAS by contacting the Fish and Wildlife Biologist (see **FOR FURTHER INFORMATION CONTACT**). Documents will also be available for review by appointment, during normal business hours, at the Ventura Fish and Wildlife Office (see **ADDRESSES**) or via the Internet at: *http://www.fws.gov/ventura.*

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. The taking prohibitions of the Act do not apply to federally listed plants on private lands unless such take would violate State law. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants.

The Applicants own 99 acres of property (Ross Property) that includes grassland and coastal brush scrub habitats, in Aptos, California. The project site is located northeast of Highway 1 and south of Freedom Boulevard, in Aptos, Santa Cruz County, California. Typical land uses in the area surrounding the project site include several rural residences, a high school, and undeveloped oak woodland areas. The Applicants propose to construct on approximately 16.5 acres of land: A 7,500 square foot house with associated landscaping (main residence), a single-family dwelling, a 1,500 square foot caretaker house, a 2,000 square foot winemaking and agricultural equipment storage facility, a 2,000 square foot barn, septic systems, a swimming pool, a tennis court, a vineyard of approximately 5 acres, and an orchard.

The Applicants propose to implement the following measures to minimize and mitigate take of the Santa Cruz long-toed salamander and California red-legged frog: Establish (with a conservation easement) and monitor a 38.8-acre preserve for the benefit of the Santa Cruz long-toed salamander and California red-legged frog; hire a Service-approved monitor and biologist; implement a construction worker education program; ensure monitoring of all grading, clearing, and other ground disturbing activities; mark construction area boundaries; construct drift fencing around construction area; control trash accumulation and install covered trash receptacles; install screens on irrigation, electrical, and other equipment to exclude Santa Cruz long-toed salamanders; surround the swimming pool with curbs to exclude Santa Cruz long-toed salamanders; remove nonnative plants; control bullfrogs; construct signs; use best management practices; and implement other minimization measures. The conservation easement would be held by the Center for Natural Lands Management, a non-profit conservation organization located in Fallbrook, California.

The impacts from the construction activities and use of the property associated with this residential construction project are considered to be negligible to the two species as a whole because: (1) The amount of habitat being disturbed is small relative to the amount of habitat available within the Applicant's property, Santa Cruz area, and within the range of the species; (2) most of the areas that would be disturbed during construction probably support few, if any, Santa Cruz long-toed salamanders and California red-legged frogs; (3) construction activities are not expected to affect Tucker Pond, where Santa Cruz long-toed salamanders are known to occur; (4) no sheltering habitat for Santa Cruz long-toed salamanders would be removed; and (5) California red-legged frogs are not expected to be present in the dry grasslands where the project will be built.

The Service's proposed action is to issue an incidental take permit to the Applicants, who would then implement the HCP. Two alternatives to the taking of listed species under the proposed action are considered in the HCP. Under the No-Action Alternative, no permit would be issued, the proposed project would not occur, and the HCP would not be implemented. This would avoid immediate effects of construction and use of the property on the Santa Cruz long-toed salamander and California red-legged frog. However, under this alternative, the Applicants would not be able to develop their property, and conservation measures for the Santa Cruz long-toed salamander and California red-legged frog would not be implemented. A second alternative would result in a redesigned project with the relocation of the development footprint to another portion of the parcel. However, much of the property is too steep to be developed, and relocation of the footprint to the western portion of the property would result in the removal of oak woodland, which is essential sheltering habitat for the Santa Cruz long-toed salamander. The Service considers the proposed development footprint as more desirable than development elsewhere on the property because the modification of habitat for the Santa Cruz long-toed salamander and California red-legged frog would not be significant, and establishment of a conservation easement including the breeding pond and upland habitat would benefit the Santa Cruz long-toed salamander and California red-legged frog.

The Service has made a preliminary determination that the HCP qualifies as a ''low effect'' HCP as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a HCP qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our EAS and associated Low Effect Screening Form, the Applicant's proposed HCP qualifies as a ''low-effect'' plan for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the Santa Cruz long-toed salamander and California red-legged frog and their habitats. The Service does not anticipate significant direct or cumulative effects to the Santa Cruz long-toed salamander or California red-legged frog resulting from development and use of the Ross Property.

(2) Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

(3) Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive

Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

(5) Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to the Applicants.

Public Review and Comment

If you wish to comment on the permit application, draft Environmental Action Statement or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Our practice is to make comments, including names, home addresses, etc., of respondents available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. In the absence of exceptional, documented circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: December 13, 2006.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. E6–21714 Filed 12–19–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meetings will be held January 25, 2007 and March 21, 2007. Both meetings will be from 9:15 a.m. to 4 p.m.

ADDRESSES: Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics for the January 25, 2007 meeting will include: Manager updates on current land management issues; the draft Colorado Recreation Strategy Communication Plan; the South Park Plan Amendment; travel management planning and the Rio Grande Natural Area. Planned agenda topics for the March 21, 2007 meeting will include: Manager updates on current land management issues; biomass utilization and travel management planning. All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda are also available (10 days prior to each meeting) at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: December 13, 2006.

Roy L. Masinton,

Royal Gorge Field Manager.

[FR Doc. E6–21713 Filed 12–19–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 2, 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 January 4, 2007.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ARKANSAS

Pulaski County

Argenta Historic District (Boundary Increase), Roughly bounded by N. Poplar, 9th St., N. Broadway, W. 4th, Broadway, North Little Rock, 06001217

CALIFORNIA

Alameda County

Altenheim, 1720 MacArthur Blvd., Oakland, 06001218

COLORADO

Larimer County

Shaffer, Henry K. and Mary E., House, 1302 N. Grant Ave., Loveland, 06001219

IOWA

Fremont County

Hunter School, Jct. of IA 275 and IA J18, Tabor, 06001220

MAINE

Aroostook County

Sodergren, John J. and Martha, Homestead, 161 S. Shore Rd., Stockholm, 06001222

Knox County

Camden Great Fire Historic District, Elm and Main Sts., Camden, 06001221

Somerset County

Mercer Union Meetinghouse, Main St., 1/10 mi. W of jct. with ME 2, Mercer, 06001223

York County

Sanford Town Hall (Former), 505 Main St., Springvale, 06001225

MONTANA

Silver Bow County

Parrot Mine Shops Complex, 244 Anaconda Rd., Butte, 06001228

Yellowstone County

Black Otter Trail, Black Otter Trail, Billings, 06001224

NEW YORK

Richmond County

West Bank Light Station, (Light Stations of the United States MPS) In lower New York Bay, 3.3 mi. E of New Dorp Beach, New Dorp Beach, 06001230

Suffolk County

Orient Point Light Station, (Light Stations of the United States MPS) NE tip of Long Island, 1.1 mi. NE of Eastern Terminus of NY 25, Orient, 06001229

NORTH DAKOTA

Cass County

Sprunk Site (32CS04478), Address Restricted, Enderlin, 06001226

RHODE ISLAND

Providence County

Downtown Pawtucket Historic District, (Pawtucket MRA) Roughly bounded by Broad St., Grant St., High St., East Ave. Ext. and Main St., Pawtucket, 06001227

SOUTH CAROLINA

Spartanburg County

Marysville School, Sunny Acres Rd., Pacolet, 06001231

TENNESSEE

Cannon County

Rucker—Mason Farm, (Historic Family Farms in Middle Tennessee MPS) 837 Hare Ln., Porterfield, 06001234

TEXAS

Bexar County

Gunter Hotel, 205 E. Houston St., San Antonio, 06001233

VERMONT

Windham County

Estey Organ Company Factory (Boundary Increase), 68 Birge St., Brattleboro, 06001232

Windsor County

Ascutney Mill Dam Historic District, 55 and 57 Ascutney St., Windsor, 06001236

Ludlow Village Historic District, Main St., Depot St., Ludlow, 06001235

[FR Doc. E6–21663 Filed 12–19–06; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1034 (Remand)]

Certain Color Television Receivers From China

AGENCY: United States International Trade Commission.

ACTION: Notice of request for comments in a remand proceeding concerning an antidumping investigation on certain color television receivers from China.

SUMMARY: The Commission hereby gives notice that it is inviting parties to the referenced proceeding to file comments in the remand proceeding ordered by the United States Court of International Trade (CIT). For further information concerning the conduct of this proceeding 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, subpart A (19 CFR part 207).

DATES: *Effective Date:* December 14, 2006.

FOR FURTHER INFORMATION CONTACT: Debra A. Baker (202–205–3180), Office of Investigations, or Marc A. Bernstein (202–205–3087), Office of General Counsel, 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 of Investigation No. 731–TA–1034 may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—In May 2004, the Commission determined that an industry in the United States was materially injured by reason of certain color television receivers (CTVs) from China. Sichuan Changhong Electric Co. (Changhong) subsequently instituted an action at the CIT challenging the Commission's determination.

The CIT issued an opinion in the matter on November 15, 2006. *Sichuan Changhong Electric Co.* v. *United States*, Ct. No. 04–00266, Slip Op. 06–168 (Ct. Int'l Trade Nov. 15, 2006). In its opinion, the CIT rejected all arguments asserted by plaintiff Changhong, but remanded the matter to the Commission for explanation and possible modification concerning the ''specific causation determination'' requirements imposed by the U.S. Court of Appeals for the Federal Circuit in *Bratsk Aluminum Smelter* v. *United States*, 444 F.3d 1369 (Fed. Cir. 2006) and *Caribbean Ispat, Ltd.* v. *United States*, 450 F.3d 1336 (Fed. Cir. 2006).

Participation in the proceeding.—Only those persons who were interested parties to the original investigation (*i.e.*, persons listed on the Commission Secretary's service list) and were parties to the appeal may participate in the remand proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding. References to business proprietary information (''BPI'') during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the original investigation.

Written Submissions.—The Commission is not reopening the record in this proceeding for submission of new factual information. The Commission will, however, permit the parties to file comments pertaining to the inquiries that are the subject of the CIT's remand instructions. Comments shall be limited to no more than twenty (20) double-spaced and single-sided pages of textual material. The parties may not submit any new factual information and may not address any issue other than the applicability of the *Bratsk* and *Ispat* decisions to this investigation, whether the Commission's causation analysis in the original investigations complies with the requirements the Federal Circuit articulated in those two decisions, and what, if any, modifications must be made to the Commission's causation analysis to put it into conformance with the requirements articulated in those decisions. Any such comments must be filed with the Commission no later than January 8, 2007.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's

rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: December 15, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–21747 Filed 12–19–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 14, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained at *http://www.reginfo.gov/public/do/PRAMain*, or contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

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

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title: Preliminary Estimate of Average Employer Tax Rates.

OMB Number: 1205–0228.

Frequency: Annually.

Affected Public: State, Local, or Tribal government.

Type of Response: Reporting.

Number of Respondents: 53.

Annual Responses: 53.

Average Response time: 15 minutes.

Total Annual Burden Hours: 14.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The Secretary has interpreted applicable sections of Federal law to require States to address the prevention, detection, and recovery of benefit overpayments caused by willful misrepresentation or errors by claimants or others. This report provides an accounting of the types and amounts of such overpayments and serves as a useful management tool for monitoring overall integrity in the Unemployment Insurance system.

Ira L. Mills,

Departmental Clearance Officer/ Team Leader.

[FR Doc. E6–21630 Filed 12–19–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 14, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: 4,4′-Methylenedianiline Construction 29 CFR 1926.60.

OMB Number: 1218–0183.

Type of Response: Recordkeeping and third-party disclosure.

Affected Public: Business or other for-profits.

Number of Respondents: 60.
Number of Annual Responses: 3,960.
Estimated Time per Response: Varies by task.
Total Burden Hours: 1,607.
Total Annualized capital/startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $80,412.
Description: The purpose of this Standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to 4,4'-Methylenedianiline. Employers must monitor exposure, keep employee exposures within the permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure-monitoring and medical records.

Agency: Occupational Safety and Health Administration.
Type of Review: Extension without change of currently approved collection.
Title: 4,4′-Methylenedianiline General Industry 29 CFR 1910.1050.
OMB Number: 1218–0184.
Type of Response: Recordkeeping and third-party disclosure.
Affected Public: Business or other for-profits.
Number of Respondents: 13.
Number of Annual Responses: 583.
Estimated Time per Response: Varies by task.
Total Burden Hours: 293.
Total Annualized capital/startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $19,312.
Description: The purpose of this Standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to 4,4-Methylenedianiline. Employers must monitor exposure, keep employee exposures within the permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure-monitoring and medical records.

Agency: Occupational Safety and Health Administration.
Type of Review: Extension without change of currently approved collection.
Title: Electrical Protective Equipment (29 CFR 1910.137), and Electric Power Generation, Transmission, and Distribution (29 CFR 1910.269).
OMB Number: 1218–0190.
Type of Response: Recordkeeping and third-party disclosure.
Affected Public: Business or other for-profits.
Number of Respondents: 20,765.
Number of Annual Responses: 437,884.
Estimated Time per Response: Varies by task.
Total Burden Hours: 30,533.
Total Annualized capital/startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The information collection requirements are needed to help provide protection to employees who use electrical protective equipment and who are involved in industries engaged in electric power generation, transmission, and distribution work.

Agency: Occupational Safety and Health Administration.
Type of Review: Extension without change of currently approved collection.
Title: Standard on Walking-Working Surfaces (29 CFR part 1910, subpart D).
OMB Number: 1218–0199.
Type of Response: Third-party disclosure.
Affected Public: Business or other for-profits.
Number of Respondents: 12,100.
Number of Annual Responses: 12,100.
Estimated Time per Response: Varies by task.
Total Burden Hours: 1,193.
Total Annualized capital/startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The information collection requirements in the Walking-Working Surfaces standard is designed to protect employees by making them aware of load limits of the floors of buildings, defective portable metal ladders, and the specifications of outrigger scaffolds used.

Agency: Occupational Safety and Health Administration.
Type of Review: Extension without change of currently approved collection.
Title: OSHA Data Initiative (ODI).
OMB Number: 1218–0209.
Type of Response: Reporting.
Affected Public: Business or other for-profits.
Number of Respondents: 100,000.
Number of Annual Responses: 100,000.
Estimated Time per Response: 10 minutes.
Total Burden Hours: 16,666.
Total Annualized capital/startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The agency will collect occupational injury and illness data from selected employers. These employers will also be required to provide the average employment, hours worked, and the name and phone number of the person submitting the data. The data collection will include mail and telephone follow-up to ask clarifying questions concerning data submitted, and to attempt to obtain responses from non-responders. The purpose of the data collection is to compile occupational injury and illness data from employers within specific industries and size categories. OSHA then will be able to calculate occupational injury and illness rates by employer and specific industry. The agency will require this information from up to 100,000 employers required to create and maintain records pursuant to 29 CFR part 1904.

In each of the previous OSHA Data Initiative (ODI) information collections, beginning with the collection of CY 1995 data, the Agency collected data from approximately 80,000 establishments each year. OSHA used the 1996 data from the 1997 collection as a baseline for both its Cooperative Compliance Program initiative and its Interim Plan for Inspection Targeting. The 1997 through 2004 injury and illness data have been used for OSHA's Site Specific Targeting (SST) plans. Each year the SST plan is updated with the most current data. The SST–06 plan is currently using CY 2004 establishment specific data.

Since 1998, OSHA has used the information from each data collection to identify approximately 14,000 establishments in Federal jurisdiction with high lost workday injury and illness case rates. OSHA sends letters to these establishments indicating its concern about the high injury and illness rate at the establishment and informing the employer of available services, such as the OSHA on-site consultation program, that can be used to identify hazards and address occupational safety and health issues.

OSHA is also using the information collected for measurement purposes to comply with the Government Performance and Results Act (GPRA). It must be noted that limiting this data collection to establishments with 40 or more employees also limits OSHA's ability to fully utilize this data collection to meet the Agency's requirements under the GPRA. A significant portion of OSHA inspections as well as consultation visits are performed at establishments with less than 40 employees. OSHA cannot

conduct follow-up data collection to measure the impact of these interventions without authorization to collect from this group of smaller employers. OSHA is seeking approval to collect data from these employers only for performance measurement purposes. Data collected from this group would not be used for OSHA's enforcement activities. Some states operating state plans pursuant to Section 18 of the OSH Act also use the information collected for the same purposes as does Federal OSHA.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E6–21631 Filed 12–19–06; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL95–F–1]

Nationally Recognized Testing Laboratories; Proposed Revised Fee Schedule

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice provides the proposed revised schedule of fees to be charged by the Occupational Safety and Health Administration (OSHA) to Nationally Recognized Testing Laboratories (NRTLs). OSHA charges fees for specific types of services it provides to NRTLs. The fees charged to NRTLs first went into effect on October 1, 2000.

DATES: The new fees shown in this notice will become effective on February 5, 2007. You must submit information or comments by the following dates:

- Hard copy: postmarked or sent by January 4, 2007.
- Electronic transmission or facsimile: sent by January 4, 2007.

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

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. NRTL95–F–1, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for this notice (OSHA Docket No. NRTL95–F–1). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.*

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Extension of Comment Period: Submit requests for extensions concerning this notice to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3655, Washington, DC 20210, or phone (202) 693–2110. Our Web page includes information about the NRTL Program (see *http://www.osha.gov* and select ''N'' in the site index).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Occupational Safety and Health Administration (OSHA) is proposing to adjust the fees that the Agency charges for the services it provides to Nationally Recognized Testing Laboratories (NRTLs). OSHA is taking this action as a result of its process for annually reviewing the fees, as provided under 29 CFR 1910.7(f). This review has shown that the costs of providing the services covered by the fees have changed sufficiently to warrant adjustments to the current fee schedule, which has been in effect since January 2002. The fee adjustments described in this notice are based on the current approach for calculating fees, which is the same approach OSHA used in developing the first fee schedule (effective October 1, 2000).

OSHA is also in the process of developing a new approach to calculating fees that would more accurately recoup the total costs of the services OSHA provides to NRTLs. The Agency will be proposing this new approach, and seeking comments on it, in a **Federal Register** notice to be published at a later date.

II. Background

Many of OSHA's safety standards require that equipment or products used in the workplace be tested and certified to help ensure they can be used safely. *See, e.g.*, 29 CFR part 1910, subpart S. In general, this testing and certification must be performed by a Nationally Recognized Testing Laboratory (NRTL). Products or equipment that have been tested and certified must have the NRTL's certification mark on them, or, if this is not feasible, then on its packaging. An employer may rely on the certification mark, which shows that the equipment or product has been tested and certified in accordance with OSHA requirements. In order to ensure that the testing and certification is done appropriately, OSHA implemented the NRTL Program. The NRTL Program establishes the criteria that an organization must meet in order to be and remain recognized as an NRTL.

The NRTL Program requirements are set forth under 29 CFR 1910.7, ''Definition and requirements for a nationally recognized testing laboratory.'' To be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and major users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures.

OSHA requires NRTL applicants (i.e., organizations seeking initial recognition as an NRTL) to provide detailed and comprehensive information about their programs, processes, and procedures in writing when they apply. OSHA reviews the written information and conducts an on-site assessment to determine whether the organization meets the requirements

of 29 CFR 1910.7. OSHA uses a similar process when an NRTL (i.e., an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs and continue to meet the recognition requirements. Currently, there are 18 NRTLs operating over 50 recognized sites in the U.S., Canada, Europe, and the Far East.

III. Program Costs and Fee Calculation

To understand the adjustments we are proposing to make to the fee schedule, Section A discusses the derivation of the hourly rate we will use to assess the fees. Section B discusses changes we are making to the estimate of activity times and briefly describes new chargeable activities for the services to NRTLs. Section C details the proposed new activity costs.

A. Derivation of Hourly Rate (ECR)

In preparing the proposed fee schedule presented in this notice, OSHA has updated its calculation of the total resources that it has committed to the NRTL Program overall and has then computed the costs that are involved solely with the application approval and the periodic review (i.e., audit) functions.

OSHA calculates the fees for these services by multiplying an equivalent average direct staff cost per hour rate (ECR) by the time it takes to perform the activities involved in application processing or audit functions. Simply put,

Fee for activity = ECR x Time for activity.

OSHA derives the ECR by taking the total estimated direct and indirect costs of the program, consisting of personnel costs (salary and fringe) and office expenses, but excluding travel, and dividing that total by the total available annual work hours of the direct staff devoted to all the NRTL Program activities, i.e., the number of full-time equivalent (FTE) personnel.[1] Illustrated as an equation:

ECR = TPC / TAW,

where TPC is the total estimated direct and indirect program costs (excluding travel) and TAW is the total available annual work hours of the direct staff.

Figure 1, below, represents OSHA's TPC of providing the services for which we charge fees and shows the calculation of the ECR. As a result of our proposed adjustments, our base hourly rate for calculating our fees, i.e., the ECR, would increase approximately 17% above its present level, from $54.50 to $63.80. The $54.50 was derived using 2002 projected staff salary and fringe, and other program costs. The 17% increase mainly reflects annual salary adjustments provided to Federal employees that have accumulated since the revision in 2002. The Agency believes these costs are fair and reasonable.

FIGURE 1.—NRTL PROGRAM ANNUAL COST ESTIMATES

Cost description	FTE	Avg. cost per FTE (including fringe)	Total costs
Direct Staff Costs	5.24	$110,743	$580,294
Indirect Staff & Other Costs	(1)	(1)	[2]115,130
Subtotal Costs			695,424
Travel Expenses	(1)	(1)	60,000
Total Program Costs			755,424

Avg. direct staff cost/hr. = $580,294/(5.24 FTE x 2,080 hours) = $53.20.
ECR = Equivalent avg. direct staff cost/hr. rate = $695,424/(5.24 FTE x 2,080 hours) = $63.80 (includes direct & indirect costs but not travel).
[1] Not applicable.
[2] This amount consists of $60,150 for management and support staff and $54,980 for equipment and other costs.

In Figure 1, Direct Staff Costs are personnel costs for the staff that perform direct activities (i.e., the services, such as the application, on-site and legal reviews, and other activities involved in application processing and audits) as well as activities not directly connected to the fees. Indirect Staff and Other Costs are expenses for support and management staff, equipment, and other costs that are involved in the operation of the program. Support and management staff consists of program management and secretarial staff. Equipment and other costs are intended to cover items such as computers, telephones, building space, utilities, and supplies, which are necessary to perform the services covered by the proposed fees. In general, indirect costs, by their very nature, are not readily identified with a specific output (in the present context, a specific activity) but are used in producing it. They are allocated to the application processing and audit activities based on direct staff costs. Travel Expenses shown in the figures are estimates of the costs we incur for travel related to the services that are covered by the fees. However, this amount is not included in the ECR since we charge for the actual staff travel expenses of the on-site visits performed by our program staff. In Figure 1, the travel expenses figure is presented only to show total program costs.

The use of an ''equivalent average direct staff cost per hour rate'' (ECR) measure is a convenient method of allocating indirect costs to each of the services for which OSHA will charge fees. The same result is obtained if direct staff costs are first calculated and then indirect costs are allocated based on the value, i.e., dollar amount, of the direct staff costs, which is an approach that is consistent with Federal accounting standards.

To illustrate this, assume that a direct staff member spends 10 hours on an activity; the direct staff costs would then be calculated as follows:

Direct staff costs = 10 hours × $53.20/hour = $532.

The $53.20/hour is the direct staff cost/hour amount shown in Figure 1. The indirect costs would be allocated by first calculating the ratio of indirect costs to direct staff costs, again using the

[1] In discussing total hours in this notice, we often refer to FTEs which stands for full-time equivalents and equals total hours divided by 2,080, the total available annual work hours for one full-time employee.

costs shown in Figure 1. This ratio would be as follows:

Indirect costs/direct staff costs = $115,130/$580,294 = 0.1984.

Next, the indirect costs would be calculated based on the $532 estimate of direct staff costs:

Indirect costs = $532 × 0.1984 = $106.

Finally, the total costs of the activity are calculated:

Total costs = direct staff costs + indirect costs = $532 + $106 = $638.

We derive the same amount using the ECR of $63.80, i.e., 10 hours × $63.80/hour = $638.

B. Modified Activity Times and Additional Activities

In addition to updating the ECR, the Agency has updated estimates of the average staff time that it spends on some specific activities or functions of the services covered by the fees. The staff activity times we updated resulted in a portion of the adjustments in the proposed Fee Schedule. OSHA previously developed these times for each major activity within the main types of services, which are application processing and audits.

For application processing, OSHA is increasing the average staff activity time in the areas of the on-site assessment and the final report/federal register notice activities. In the first case, the increase mainly reflects the time necessary for making travel arrangements and, in the second case, mainly reflects the separate time necessary for the preparation of the notice. For audits, OSHA is increasing the average staff activity time in the areas of the pre-site review and report preparation activities, each for similar reasons as the corresponding application activities just described. In addition, in both cases, we propose to charge for actual travel time (i.e., time in travel to and from sites), which replaces the nominal 4 hours that we currently include in the first day fee for assessments and audits.

OSHA also is charging for some additional activities it performs during application processing and audits. These activities are for Additional Application Review, Supplemental Program Review, and Invoice Processing. Section IV of this notice further explains these activities and the modifications mentioned above. The proposed estimates reflect the Agency's experience with the NRTL Program fees over the four years since OSHA published the current fee schedule.

C. Tables of Activity Costs

Figures 2, 3, 4, and 5, below, present the costs of the major activities for which fees are charged. We include average travel costs in the figures below to provide an overall cost for a particular activity. However, as explained above, since we charge for actual travel, only the non-travel costs serve as the basis for the fees later shown in the Proposed Fee Schedule (Table A). In deriving the fee amounts shown in the Table A, OSHA has generally rounded the costs shown in Figures 2, 3, 4, and 5, up or down, to the nearest $5 or $10 amount.

FIGURE 2.—INITIAL APPLICATION COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost*
Initial Application Review	Office and field staff time	80	$5,100
Additional Review Time	Office staff	16	1,020
On-Site Assessment—first day (per site, per assessor)	Field staff time (16 hours preparation, 6 hours travel processing, and 8 hours at site).	30	1,914
	Field staff travel expense ($700 airfare/other + $100 per diem).	(1)	800
	Total	.....	2,714
On-Site Assessment—each addnl. day** (per site, per assessor).	Field staff time (at site)	8	510
	Field staff travel expense (per diem only)	(1)	100
	Total	.....	610
On-Site Assessment travel time—per day (per site, per assessor).	Field staff	8	510
Review and Evaluation (10 test standards)	Office staff time	2	128
Final Report & Federal Register notice	Field and office staff time	132	8,422
Fees Invoice Processing	Office staff time	2	128

* Average cost for staff time = average hours x equivalent average direct staff cost/hr. ($63.80).
** Note: 2 additional days estimated if there are 2 assessors and 4 additional days estimated if there is 1 assessor.
[1] Not applicable.

FIGURE 3.—EXPANSION APPLICATION (ADDITIONAL SITE) COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost*
Application Review (expansion for site)	Office and field staff time	16	$1,021
Additional Review Time	Office staff	8	510
On-Site Assessment—first day (per site, per assessor)	Field staff time (12 hours preparation, 4 hours travel processing, and 8 hours at site).	24	1,531
	Field staff travel time expense ($700 airfare/other + $100 per diem).	(1)	800
	Total	.....	2,331
On-Site Assessment—addnl. day** (per site, per assessor)	Field staff time (at site)	8	510
	Field staff travel expense (per diem only)	(1)	100

FIGURE 3.—EXPANSION APPLICATION (ADDITIONAL SITE) COST ESTIMATES—Continued

Major activity	Type of cost	Average hours	Average cost*
	Total	.....	610
On-Site Assessment travel time—per day (per site, per assessor).	Field staff	8	510
Review and Evaluation Fee (10 test standards)	Office staff time	2	128
Final Report & Federal Register notice	Field and office staff time	50	3,190
Fees Invoice Processing	Office staff time	2	128

* Average cost for staff time = average hours x equivalent average direct staff cost/hr. ($63.80).
** Note: 2 additional days estimated for 1 assessor.
[1] Not applicable.

FIGURE 4.—RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost*
Application Review (renewal or expansion other than additional site).	Office and field staff time	2	$128
Additional Review Time	Office staff	8	510
Renewal Application Information Review	Office staff	16	1,021
On-Site Assessment—first day (expansion) (per site, per assessor).	Field staff time (8 hours preparation, 4 hours travel processing, and 8 hours at site).	20	1,276
	Field staff travel expense ($700 airfare/other + $100 per diem).	(1)	800
	Total	.....	2,076
On-Site Assessment—first day (renewal) (per site, per assessor).	Field staff time (16 hours preparation, 4 hours travel processing, and 8 hours at site).	28	1,787
	Field staff travel expense ($700 airfare/other + $100 per diem).	(1)	800
	Total	.....	2,587
On-Site Assessment—addnl. day** (per site, per assessor)	Office staff time (at site)	8	510
	Field staff travel expense (covers per diem only)	(1)	100
	Total	610	
On-Site Assessment travel time—per day (per site, per assessor).	Field staff	8	510
Review and Evaluation Fee (10 test standards) (expansion)	Office staff time	2	128
Final Report & Federal Register notice	Office and field staff time (if there is an on-site assessment).	50	3,190
Final Report & Federal Register notice	Office and field staff time (if there is NO on-site assessment).	30	1,914
Supplemental Program Review	Office and field staff time (per program requested incl. consultation and assessor's memo).	4	255
Fees Invoice Processing	Office staff time	2	128

* Average cost for staff time = average hours × equivalent average direct staff cost/hr. ($63.80).
** Note: 2 additional days estimated for renewal assessment; no additional days for expansion assessment.
[1] Not applicable.

FIGURE 5.—ON-SITE AUDIT COST ESTIMATES

Major activity	Type of cost	Average hours	Average cost*
On-Site Audit—first day (per site, per auditor)	Field staff time (12 hours pre-site review preparation, 4 hours travel processing, and 8 hours at site).	24	1,531
	Prepare report/contact NRTL plus office review staff time (2 days for field staff and 2 hours for office staff).	18	1,148
	Subtotal (first day)	.....	2,679
	Field staff travel expense ($700 airfare/other + $100 per diem).	(1)	800
	Total	.....	3,479
On-Site Audit—addnl. day** (per site, per auditor)	Field staff time (at site)	8	510

FIGURE 5.—ON-SITE AUDIT COST ESTIMATES—Continued

Major activity	Type of cost	Average hours	Average cost *
	Travel expense (covers per diem only)	(1)	100
	Total		610
On-Site Audit travel time—per day (per site, per auditor)	Field staff	8	510
Fees Invoice Processing	Office staff time	2	128

* Average cost for staff time = average hours × equivalent average direct staff cost/hr. ($63.80).
** Note: 1.0 additional day estimated for 1 auditor.
[1] Not applicable.

IV. Proposed Fee Schedule and Description of Fees

OSHA proposes the adjusted fee schedule shown below as Table A.

TABLE A.—FEE SCHEDULE: NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM)

[Fee Schedule (Effective February 5, 2007)] [12]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
APPLICATION PROCESSING	Initial Application Review [1 8]	$5,100.
	Expansion Application Review (per additional site) [1 8]	1,020.
	Renewal or Expansion (other) Application Review [1]	130.
	Renewal Information Review Fee [7]	1,020.
	Additional Review—Initial Application (if the application is substantially revised, submit one-half Initial Application Review fee) [7].	1,020.
	Additional Review—Renewal or Expansion Application [7]	510.
	Assessment—Initial Application (per site—SUBMIT WITH APPLICATION) [2 4 8].	8,890.
	Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT) [2 10].	1,910 + actual travel expenses.
	Assessment—Renewal Application (per person, per site—first day) [3 10]	1,790 + actual travel expenses.
	Assessment—Expansion Application (additional site) (per person, per site—first day) [3].	1,530 + actual travel expenses.
	Assessment—Expansion Application (other) (per person, per site—first day) [3].	1,280 + actual travel expenses.
	Assessment—each addnl. day or each day on travel (per person, per site) [2 3].	510 + actual travel expenses.
	Review & Evaluation [5] ($13 per standard if it is already recognized for NRTLs and requires minimal review; OR else $64 per standard).	13 per standard OR $64 per standard.
	Final Report/Register Notice—Initial Application [5 9]	8,420.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs on-site assessment) [5 9].	3,190.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs NO on-site assessment) [5 9].	1,910.
AUDITS	On-site Audit (per person, per site, first day) [6]	2,680 + actual travel expenses.
	On-site Audit—each addnl. day or each day on travel (per person, per site) [6].	510 + actual travel expenses.
	Office Audit (per person, per site) [6]	510.
MISCELLANEOUS	Supplemental Travel (per site—for sites located outside the 48 contiguous States or the District of Columbia) [4].	1,000.
	Supplemental Program Review (per program requested) [4]	260.
	Fees Invoice Processing (per application or audit) [4]	130.
	Late Payment [11]	64.

[1] Who must pay the Application Review fees, and when must they be paid? If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and submit this fee concurrently with your expansion or renewal application. See note 7 if you amend or revise your initial or expansion application.

[2] What assessment fees do you submit for an initial application, and when must they be paid? If you are applying for initial recognition as an NRTL, you must pay $8,890 for each site for which you wish to obtain recognition, and you must submit this amount concurrently with your initial application. We base this amount on two assessors performing a three-day assessment at each site. After completing the actual assessment, we calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We calculate this fee at the rate of $1,910 for the first day at the site, $510 for each additional day at the site, and $510 for each day in travel, plus actual travel expenses, for each assessor. *(Note: days charged for being in travel status are those allowed under government travel rules. This note applies to any assessment or audit.)* Actual travel expenses are determined by government per diem and other travel rules. We bill or refund the difference between the amount you pre-paid and the actual assessment fee. We reflect this difference in the final bill that we send to you at the time we publish the preliminary Federal Register notice announcing the application.

[3] What assessment fees do you submit for an expansion or renewal application, and when must they be paid? If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we bill you for this fee after we perform the assessment. The fee is based on the actual staff time and travel costs we incurred in performing the assessment. We calculate this fee at the rate of $1,790, $1,530, or $1,280 for the first day at the site of a renewal, expansion (site), and expansion (other) assessment, respectively. We also include $510 for each additional day at the site and $510 for each day in travel, plus actual travel expenses, for each assessor. Actual travel expenses are determined by government per diem and other travel rules. When more than one site of the NRTL is visited during one trip, we charge the $510 additional day fee, plus actual travel expenses, for each day at a site.

[4] When do I pay the Supplemental Travel, the Supplemental Program Review, or the Fees Invoice Processing fees? You must include the Supplemental Travel fee when you submit an initial application for recognition and the site you wish to be recognized is located outside the 48 contiguous U.S. states or the District of Columbia. The current supplemental travel fee is $1,000. We factor in this prepayment when we bill for the actual costs of the assessment, as described in our note 2, above. See note 8 for possible refund of application or assessment fees. You must include the Supplemental Program Review fee when you apply for approval to use other qualified parties or facilities to perform specific activities. See Chapter 2 of the NRTL Program Directive for more information. We will include the Fees Invoice Processing fee in the total for each of our invoices to you.

[5] When do I pay the Review and Evaluation and the Final Report/Register Notice fees? We bill an applicant or an NRTL for the appropriate fees at the time we publish the preliminary **Federal Register** notice to announce the application. We calculate the Review and Evaluation Fee at the rate of $13 per test standard requested for those standards that OSHA previously recognized for any NRTL and that require minimal review or do not represent a new area of testing for the NRTL. Otherwise, this fee is $64 per standard requested.

[6] When do I pay the Audit fee? We bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit and base the fee on actual staff time and travel costs incurred in performing the audit. We calculate our fee at the rate of $2,680 for the first day at the site, $510 for each additional day at the site, and $510 for each day in travel, plus actual travel expenses for each auditor. Actual travel expenses are determined by government per diem and other travel rules.

[7] When do I pay the Additional Review fee or Renewal Information Review fee? The Additional Review fees cover the staff time in reviewing new or modified information submitted after we have completed our preliminary review of an application. There is no charge for review of a ''minor'' revision, which entails modifying or supplementing less than approximately 10% of the documentation in the application. The Additional Review fee applies to revisions modifying or supplementing from 10% to 50% of that documentation. For a new application, the fee represents 16 hours of additional review time and for a renewal or expansion application, the fee represents 8 hours of additional review time. If an applicant exceeds that 50% threshold in revising its application, we will charge one-half the Initial Application Review fee and the full Expansion Application Review fee, as applicable. The Renewal Information Review fee applies when an NRTL submits updated information to OSHA in connection with a request for renewal of recognition.

[8] When and how can I obtain a refund for the fees that I paid? If you withdraw before we complete our preliminary review of your initial application or your expansion application to include an additional site, we will refund half of the application fee. If you are applying for initial recognition as an NRTL, we will refund the pre-paid assessment fees if you withdraw your application before we have traveled to your site to perform the on-site assessment. For an initial application, we will also credit your account for any amount of the pre-paid assessment fees collected that is greater than the actual cost of the assessment. Other than these cases, we do not generally refund or grant credit for any other fees that are due or collected.

[9] Will I be billed even if my application is rejected? If we reject your application, we will bill you for the fees pertaining to tasks that we have performed that are not covered by the fees you have submitted. For example, if we perform an assessment for an expansion application but deny the expansion, we will bill you for the assessment fee. Similarly, we will bill you for the Final Report and **Federal Register** fee if we also wrote the report and published the notice. See note 11 for the consequences of non-payment.

[10] What rate does OSHA use to charge for staff time? OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, supervision and support for each ''direct staff'' member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $63.80.

[11] What happens if I do not pay the fees that I am billed? As explained above, if you are an applicant, we will send you a final bill (for any assessment and for the Review and Evaluation and Final Report/Register Notice fees) at the time we publish the preliminary **Federal Register** notice. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 10). If we do not receive payment within 60 days of the bill date, we will cancel your application. As also explained above, if you are an NRTL, we will generally send you a bill for the audit fee after completion of the audit. If you do not pay the fee by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. If we do not receive payment within 60 days of the bill date, we will publish a **Federal Register** notice stating our intent to revoke recognition. However, please note that in either case, you may be subject to collection procedures under U.S. (Federal) law.

[12] How do I know whether this is the most Current Fee Schedule? You should contact OSHA's NRTL Program (202–693–2110) or visit the program's Web site to determine the effective date of the most current Fee Schedule. Access the site by selecting ''N'' in the Subject Index at *http://www.osha.gov.* Any application review fees are those in effect on the date you submit your application. Other application processing fees are those in effect when the activity covered by the fee is performed. Audit fees are those in effect on the date we begin our audit.

In evaluating the adjustments to the fee schedule, OSHA has considered the following: (1) Actual expenditures for the 2005 fiscal year, and (2) expected costs for the 2006 fiscal year. Both increases and decreases are reflected in these adjustments.

The following is a description of the tasks and functions currently covered by each type of fee category, *e.g.,* application fees, and the basis used to charge each fee.

Application Fees: This fee reflects the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. The application review does not include a determination on the test standards requested, which is reflected in the Review and Evaluation fee. Application fees are based upon average costs per type of application. OSHA uses an average cost because the amount of time spent on the application review does not vary greatly by type of application. This is based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that, indeed, most applicants do follow the application guide that OSHA provides. Two new fees are being added in this area, which are explained in the Section VI, below.

Assessment Fees: This fee is different for the initial renewal expansion (site) and expansion (other) applications. It is based on the number of days for staff preparatory and on-site work and related travel. Six types of fees are shown, and five are charged per site and per person. The four fees for the first day reflect time for office preparation and 8 hours at the applicant's facility. There is one fee covering either additional days at the facility and/or days in travel. Additional days or days in travel are assessed for either a half or a full day. A supplemental travel amount is assessed for travel outside the contiguous 48 states or the District of Columbia. For initial applications, an amount to cover the assessment must be submitted ''up-front'' with the application. In addition to the first day and additional day amounts, the applicant or NRTL must pay actual travel expenses, based on government per diem and travel rules. For initial applications, any difference between actual travel expenses and the up-front

travel amount is reflected in the final bill or refund sent to the applicant.

Similar to the application fee, the office preparation time generally involves the same types of activities. Actual time at the facility may vary, but the staff devote at least a full day to performing the on-site work. The fee for the additional day reflects time spent at the facility and the actual travel expenses for that day.

Review and Evaluation Fee: This fee is charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent on the office review of an application varies based on the number of test standards requested by the applicant. In general, the fee is based on the estimated time necessary to review test standards to determine whether each one is ''appropriate,'' as defined in 29 CFR 1910.7, and covers equipment for which OSHA mandates certification by an NRTL. The fee also covers time to determine the current designation and status (*i.e.*, active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. Furthermore, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. When the review is minimal, these activities take approximately 2 hours for 10 standards. This translates to $13 per standard. When the review is more substantial, the estimated average review time per standard is one hour for each standard, which translates to $64 per standard. Substantial review will occur when the standard has not been previously recognized for any NRTL or when the NRTL is proposing to conduct testing in a ''new'' area, *i.e.*, for a type of product not similar to any currently included under its scope of recognition.

Final Report/Register Notice Fees: Each of these fees are charged per application. The fee reflects the staff time required to prepare the report of the on-site review of an applicant's or an NRTL's facility, which includes contacting the applicant or NRTL to discuss issues or items in its response to our findings during our assessment. The fee also reflects the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received in response to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant. There is a separate fee when OSHA performs no on-site assessment. In these cases, the NRTL Program staff perform an office assessment and prepare a memo to recommend the expansion or renewal.

Audit (Post-Recognition Review) Fees: These fees reflect the time for office preparation, time at the facility and travel, and time to prepare the audit report of the on-site audit. A separate fee is shown for an office audit conducted in lieu of an actual visit. Each fee is per site and does not generally vary for the same reasons described for the assessment fee and because the audit is generally limited to between one and two days. As previously described, the audit fee includes amounts for travel, and, similar to assessments, OSHA will bill the NRTL for actual travel expenses.

Miscellaneous Fees: Four different fees are shown under this category. OSHA can charge a Late Payment fee if an invoice is not paid by the due date. This amount represents 1 hour of staff time for contacting the NRTL and preparing a late invoice and cover letter. The Supplemental Travel fee applies per site for an initial application if the site to be recognized is located outside the 48 contiguous U.S. states or the District of Columbia. The fee is $1,000. We are adding two new miscellaneous fees, which are explained in Section VI, below.

VI. Major Changes to the Fee Schedule

The following table shows the major adjustments (*i.e.*, increases or decreases of $100 or more) that we propose to make to the fee schedule in Table A as compared to the current fee schedule.[2] Following the table, we explain each of the major adjustments.

TABLE OF MAJOR ADJUSTMENTS TO FEE SCHEDULE

Description of activity or category	Current fee amount	Proposed fee amount	Comment on change in fee amount
Initial Application Review	$4,400	$5,100	None.
Expansion Application Review	850	1,020	None.
Additional Review—Initial Application	None	1,020	New fee.
Renewal Application Information Review	None	1,020	New fee.
Additional Review—Renewal or Expansion Application	None	510	New fee.
Assessment—Initial Application (SUBMIT WITH APPLICATION).	6,500	8,890	None.
Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT).	1,500	1,910	None.
Assessment—Renewal Application (per person, per site—first day).	1,100	1,790	Currently combined with expansion assessment fee.
Assessment—Expansion (additional site) (per person, per site—first day).	1,100	1,530	Currently combined with renewal assessment fee.
Assessment—Expansion (other) (per person, per site—first day).	1,100	1,280	Currently combined with renewal assessment fee.
Assessment—each addnl. day OR travel time—each day (per person, per site).	440	510	Only 4 hours of travel time currently charged through the first day fee for assessments.
Review & Evaluation	10 per ten standards	13 per standard	Correction of undercharge per ten standards: $130 + $10 = $120.
Final Report/Register Notice—Initial Application	6,550	8,420	None.

[2] Our current fee schedule is available on the OSHA Web site.

TABLE OF MAJOR ADJUSTMENTS TO FEE SCHEDULE—Continued

Description of activity or category	Current fee amount	Proposed fee amount	Comment on change in fee amount
Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs on-site assessment).	2,600	3,190	None.
Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs NO on-site assessment).	1,500	1,910	None.
On-site Audit (first day)	1,950	2,680	None.
Supplemental Program Review	None	260	New fee
Fees Invoice Processing	None	130	New fee.

Application and Assessment. The increase in the application review fees, the assessment-related fees, and the final report/register notice fees resulted primarily from the increase in the hourly cost charged for the direct staff time. The audit-related fees also increased in part for the same reason but also because we added 4 hours for the pre-site review of each audit and 14 hours for the preparation of the audit report. These extra hours are reflected in Figure 5. In our current fee schedule, we have a fee for Assessment—Expansion or Renewal Application (first day). Under the proposed schedule, we would replace this with a separate assessment fee for renewals and a separate fee for each type of expansion.

Travel. We changed our treatment of ''travel time,'' which is time in travel to and from a site, as opposed to audit or assessment time at a site. Travel time is determined following Government travel regulations. Currently, the fee schedule includes only 4 hours of travel time for an entire trip, which is reflected in the first day fee for assessments and audits. As explained in the notes to the fee schedule, we have removed the 4-hour travel time from these first day fees and propose to charge for actual travel time at the rate for an additional day, which under the proposed schedule would be $510. This rate would be charged based on either a half-day or a full day. We are charging for this fee separately, as opposed to including it in the first day flat fee, in order to more accurately recoup our travel costs. For example, if a trip for an audit lasts a total of three days, with two of those days spent at the site, we currently charge the lab for 2.5 workdays (20 hours). Under the proposed schedule, we would charge for 3 workdays (24 hours). This charge is most important in the case of foreign travel where travel time may be 2 or 3 days in total. Of course, the removal of the 4 hours of travel time from the first day of an assessment or of an audit reduces those fees.

Additional Application Review. The new Additional Review fees cover the staff time in reviewing new or modified information submitted for an application. For example, an applicant may need to revise or amend an initial or expansion application if we find that there are ''major'' deficiencies with it. There is no charge for review of a ''minor'' revision, which as Note 7 to the Fee Schedule describes, entails modifying or supplementing less than approximately 10% of the documentation in the application. The Additional Review fee applies to revisions modifying or supplementing from 10% to 50% of that documentation. For a new application, the fee represents 16 hours of additional review time and for a renewal or expansion application, the fee represents 8 hours of additional review time. If an applicant exceeds that 50% threshold in revising its application, we will charge one-half the Initial Application Review fee and the full Expansion Application Review fee, as applicable. The Renewal Information Review fee applies when an NRTL submits updated information to OSHA in connection with a request for renewal of recognition. For example, such information may include revised procedures and manuals for various parts of its testing and certification activities.

Supplemental Program Review and Fees Invoice Processing. There are two more new fees, which would recoup costs for tasks we now perform in application processing and/or audits, but for which we do not charge. The first fee, Supplemental Program Review, covers the time to review requests by NRTLs to use a supplemental program, under which NRTLs can use other qualified parties to perform tasks necessary for product testing and certification. Currently, there are eight of these programs, and NRTLs may apply to use one or more of them. The use of the term ''program'' in this context may be a bit misleading. It is not separate from, but just a segment within, the NRTL Program and defines the category or type of activity or service that the NRTL can accept from other parties or facilities. To be approved to use a program, the NRTL must meet certain criteria and the fee covers the time for us to make the office review and determination. If an on-site assessment were needed as part of granting the approval, this would be covered separately in the fee for the on-site assessment or audit during which we review documentation or other operational aspects related to a proposed use of the applicable program(s). The second fee is Fees Invoice Processing, which also involves tasks directly related to the application processing or audit activities and for which we have not been recouping costs. We follow essentially the same process to prepare each invoice for either an application or an audit and would thus charge per invoice prepared.

Review and Evaluation Fee. The increase in the Review and Evaluation Fee is primarily a correction to the basis we used in the current fee schedule. In both cases, we base the fee on performing two separate reviews of 10 standards in 2 hours. However, the current fee schedule incorrectly reflects a $10 cost for those 2 hours. Since the current hourly rate is $54.50, this means the current fee is understated by about $100 per ten standards (i.e., currently, it should be $109 per 10 standards, but we are only charging $10 per 10 standards). At the proposed hourly rate, those 2 hours would result in a cost of $130 for the 10 standards or $13 per standard.

Notes to the Fee Schedule. We also propose to change a few of the notes to the fee schedule. In the table below, we show the notes that we plan to modify or add and explain why. Proposed adjustments that merely update a fee amount mentioned in a note are not explained or described in the table below.

TABLE OF MODIFIED OR NEW NOTES TO THE FEE SCHEDULE

Note to fee schedule	Fee or area covered by note	Reason(s) for modifying or adding note
2	Initial application assessment	This note now also describes the separate charge for staff travel time.
3	Expansion or renewal assessment	This note now also describes the separate charge for staff travel time and shows the different first day fees for renewal and expansion assessments.
4	Supplemental travel	This note mentions possible refund of application fees. It also describes the new Supplemental Program Review and Fees Invoice Processing fees.
5	Review and evaluation	We corrected the basis for charging this fee, as explained in the section above.
6	Audit	This note now also describes the separate charge for staff travel time.
7	Additional review	Note 7 previously covered refund of fees and now would cover the fee for additional reviews of applications.
8	Refunds	This note would permit refunds of half the application fee if an applicant withdraws its initial or expansion (additional site) application before we complete our preliminary review. Note 8 previously covered the hourly rate for staff time, which is now under Note 10.
9	Application rejection	Note 9 previously covered non-payment of fees and now would cover the new area of fees due if we were to reject an application.
11	Non-payment	Note 11 is new. This area was previously covered under Note 9 and now would include a statement about collection procedures under U.S. (Federal) law.
12	Fees in effect	Note 12 is new. This area was previously covered under Note 10 and now would include a note primarily to change the ''in-effect'' criterion for certain application processing fees.

Finally, we are explaining again a matter dealing with the fee for Review and Evaluation, which was addressed when revising our fees in 2002. We revisit it here to clarify one aspect of our work involved in this activity. NRTLs submit requests to expand their scope to include additional test standards, *i.e.*, testing of additional types of products. Generally, this request has consisted of a listing of the test standards. If we determine that the products requested are similar to products already in the particular NRTL's scope, the testing would fall within its current capabilities, and no additional documentation needs to be reviewed. In that case, the NRTL would be charged the proposed fee of $13 per standard requested. However, if the NRTL requests a standard that represents a new area of testing under its scope, then it must submit information on the testing equipment and procedures it will use as well as qualifications of personnel that will perform the testing. In that case, the charge would be $64 per standard, representing an average of 1 hour to review the information that must be submitted. Similarly, if OSHA has not previously recognized a particular standard for any NRTL, even though it may cover types of products under test standards that we have recognized, we would charge $64 per standard, representing an average of 1 hour to review the testing and other provisions of the standard and to determine if the NRTL has the necessary capability.

Proposed Decision

OSHA has performed its annual review of the fees it currently charges to Nationally Recognized Testing Laboratories, as provided under 29 CFR 1910.7(f). Based on this review, OSHA has determined that the current fee schedule warrants adjustment, as detailed in this notice. As a result, OSHA proposes to revise those current fees by adopting the Nationally Recognized Testing Laboratory Program Fee Schedule shown as Table A, above, which would become effective on February 5, 2007.

OSHA welcomes public comments, including supporting information on the proposed fee schedules. Your comment should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 15 days, unless the requester justifies a longer period. You may obtain or review documents related to the establishment of the fees and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL95–F–1, contains all materials in the record concerning OSHA's NRTL Program fees.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend the final version of the NRTL Program Fee Schedule to the Assistant Secretary. The Agency will publish a public notice of its final version of the fee schedule in the **Federal Register**, as provided under 29 CFR 1910.7.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

For the reasons discussed in the preamble, OSHA proposes to revise the fees it currently charges to Nationally Recognized Testing Laboratories by adopting the following Fee Schedule:

NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM)

[FEE SCHEDULE (Effective December 20, 2006)] [12]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee Amount
APPLICATION PROCESSING.	Initial Application Review [1 8]	$5,100.
	Expansion Application Review (per additional site) [1 8]	1,020.
	Renewal or Expansion (other) Application Review [1]	130.
	Renewal Information Review Fee [7]	1,020.

NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM)—Continued

[FEE SCHEDULE (Effective December 20, 2006)] [12]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee Amount
	Additional Review—Initial Application (if the application is substantially revised, submit one-half Initial Application Review fee) [7].	1,020.
	Additional Review—Renewal or Expansion Application [7]	510.
	Assessment—Initial Application (per site—SUBMIT WITH APPLICATION) [2 4 8]	8,890.
	Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT) [2 10].	1,910 + actual travel expenses.
	Assessment—Renewal Application (per person, per site—first day) [3 10]	1,790 + actual travel expenses.
	Assessment—Expansion Application (additional site) (per person, per site—first day) [3].	1,530 + actual travel expenses.
	Assessment—Expansion Application (other) (per person, per site—first day) [3]	1,280 + actual travel expenses.
	Assessment—each addnl. day or each day on travel (per person, per site) [2 3]	510 + actual travel expenses.
Review & Evaluation [5]	(13 per standard if it is already recognized for NRTLs and requires minimal review; OR else $64 per standard).	13 per standard OR 64 per standard.
	Final Report/Register Notice—Initial Application [5 9]	8,420.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs on-site assessment) [5 9].	3,190.
	Final Report/Register Notice—Renewal or Expansion Application (if OSHA performs NO on-site assessment) [5 9].	1,910.
AUDITS	On-site Audit (per person, per site, first day) [6]	2,680 + actual travel expenses.
	On-site Audit—each addnl. day or each day on travel (per person, per site) [6]	510 + actual travel expenses.
	Office Audit (per person, per site) [6]	510.
MISCELLANEOUS	Supplemental Travel (per site—for sites located outside the 48 contiguous States or the District of Columbia) [4].	1,000.
	Supplemental Program Review (per program requested) [7]	260.
	Fees Invoice Processing (per application or audit) [4]	130.
	Late Payment [11]	64.

[1] Who must pay the Application Review fees, and when must they be paid? If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and submit this fee concurrently with your expansion or renewal application. See note 7 if you amend or revise your initial or expansion application.

[2] What assessment fees do you submit for an initial application, and when must they be paid? If you are applying for initial recognition as an NRTL, you must pay $8,890 for each site for which you wish to obtain recognition, and you must submit this amount concurrently with your initial application. We base this amount on two assessors performing a three-day assessment at each site. After completing the actual assessment, we calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We calculate this fee at the rate of $1,910 for the first day at the site, $510 for each additional day at the site, and $510 for each day in travel, plus actual travel expenses, for each assessor. (*Note: days charged for being in travel status are those allowed under government travel rules. This note applies to any assessment or audit.*) Actual travel expenses are determined by government per diem and other travel rules. We bill or refund the difference between the amount you pre-paid and the actual assessment fee. We reflect this difference in the final bill that we send to you at the time we publish the preliminary **Federal Register** notice announcing the application.

[3] What assessment fees do you submit for an expansion or renewal application, and when must they be paid? If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we bill you for this fee after we perform the assessment. The fee is based on the actual staff time and travel costs we incurred in performing the assessment. We calculate this fee at the rate of $1,790, $1,530, or $1,280 for the first day at the site of a renewal, expansion (site), and expansion (other) assessment, respectively. We also include $510 for each additional day at the site and $510 for each day in travel, plus actual travel expenses, for each assessor. Actual travel expenses are determined by government per diem and other travel rules. When more than one site of the NRTL is visited during one trip, we charge the $510 additional day fee, plus actual travel expenses, for each day at a site.

[4] When do I pay the Supplemental Travel, the Supplemental Program Review, or the Fees Invoice Processing fees? You must include the Supplemental Travel fee when you submit an initial application for recognition and the site you wish to be recognized is located outside the 48 contiguous U.S. states or the District of Columbia. The current supplemental travel fee is $1,000. We factor in this prepayment when we bill for the actual costs of the assessment, as described in our note 2, above. See note 8 for possible refund of application or assessment fees. You must include the Supplemental Program Review fee when you apply for approval to use other qualified parties or facilities to perform specific activities. See Chapter 2 of the NRTL Program Directive for more information. We will include the Fees Invoice Processing fee in the total for each of our invoices to you.

[5] When do I pay the Review and Evaluation and the Final Report/Register Notice fees? We bill an applicant or an NRTL for the appropriate fees at the time we publish the preliminary **Federal Register** notice to announce the application. We calculate the Review and Evaluation Fee at the rate of $13 per test standard requested for those standards that OSHA previously recognized for any NRTL and that require minimal review or do not represent a new area of testing for the NRTL. Otherwise, this fee is $64 per standard requested.

[6] When do I pay the Audit fee? We bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit and base the fee on actual staff time and travel costs incurred in performing the audit. We calculate our fee at the rate of $2,680 for the first day at the site, $510 for each additional day at the site, and $510 for each day in travel, plus actual travel expenses for each auditor. Actual travel expenses are determined by government per diem and other travel rules.

[7] When do I pay the Additional Review fee or Renewal Information Review fee? The Additional Review fees cover the staff time in reviewing new or modified information submitted after we have completed our preliminary review of an application. There is no charge for review of a ''minor'' revision, which entails modifying or supplementing less than approximately 10% of the documentation in the application. The Additional Review fee applies to revisions modifying or supplementing from 10% to 50% of that documentation. For a new application, the fee represents 16 hours of additional review time and for a renewal or expansion application, the fee represents 8 hours of additional review time. If an applicant exceeds that 50% threshold in revising its application, we will charge one-half the Initial Application Review fee and the full Expansion Application Review fee, as applicable. The Renewal Information Review fee applies when an NRTL submits updated information to OSHA in connection with a request for renewal of recognition.

[8] When and how can I obtain a refund for the fees that I paid? If you withdraw before we complete our preliminary review of your initial application or your expansion application to include an additional site, we will refund half of the application fee. If you are applying for initial recognition as an NRTL, we will refund the pre-paid assessment fees if you withdraw your application before we have traveled to your site to perform the on-site assessment. For an initial application, we will also credit your account for any amount of the pre-paid assessment fees collected that is greater than the actual cost of the assessment. Other than these cases, we do not generally refund or grant credit for any other fees that are due or collected.

[9] Will I be billed even if my application is rejected? If we reject your application, we will bill you for the fees pertaining to tasks that we have performed that are not covered by the fees you have submitted. For example, if we perform an assessment for an expansion application but deny the expansion, we will bill you for the assessment fee. Similarly, we will bill you for the Final Report and **Federal Register** fee if we also wrote the report and published the notice. See note 11 for the consequences of non-payment.

[10] What rate does OSHA use to charge for staff time? OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, supervision and support for each ''direct staff'' member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $63.80.

[11] What happens if I do not pay the fees that I am billed? As explained above, if you are an applicant, we will send you a final bill (for any assessment and for the Review and Evaluation and Final Report/Register Notice fees) at the time we publish the preliminary **Federal Register** notice. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 10). If we do not receive payment within 60 days of the bill date, we will cancel your application. As also explained above, if you are an NRTL, we will generally send you a bill for the audit fee after completion of the audit. If you do not pay the fee by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. If we do not receive payment within 60 days of the bill date, we will publish a **Federal Register** notice stating our intent to revoke recognition. However, please note that in either case, you may be subject to collection procedures under U.S. (Federal) law.

[12] How do I know whether this is the most Current Fee Schedule? You should contact OSHA's NRTL Program (202–693–2110) or visit the program's Web site to determine the effective date of the most current Fee Schedule. Access the site by selecting ''N'' in the Subject Index at *http://www.osha.gov*. Any application review fees are those in effect on the date you submit your application. Other application processing fees are those in effect when the activity covered by the fee is performed. Audit fees are those in effect on the date we begin our audit.

[FR Doc. E6–21670 Filed 12–19–06; 8:45 am]
BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2006–7]

Notice of Intent to Audit

AGENCY: Copyright Office, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Office of the Library of Congress is announcing receipt of a notice of intent to audit 2005 statements of account concerning the eligible nonsubscription transmissions of sound recordings made by Beethoven.com (''Beethoven'') under statutory licenses.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 106(6) of the Copyright Act, title 17 of the United States Code, gives the copyright owner of a sound recording the right to perform a sound recording publicly by means of a digital audio transmission, subject to certain limitations. Among these limitations are certain exemptions and a statutory license which allows for the public performance of sound recordings as part of ''eligible nonsubscription transmissions.''[1] 17 U.S.C. 114. A music service that operates under the section 114 statutory license may also make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act. Use of these licenses requires that services make payments of royalty fees to and file reports of sound recording performances with SoundExchange. SoundExchange is a collecting rights entity that was designated by the Librarian of Congress to collect statements of account and royalty fee payments from services and distribute the royalty fees to copyright owners and performers entitled to receive such royalties under sections 112(e) and 114(g) following a proceeding before a Copyright Arbitration Royalty Panel (CARP)—the entity responsible for setting rates and terms for use of the section 112 and section 114 licenses prior to the passage of the Copyright Royalty and Distribution Reform Act of 2004 (CRDRA), Pub. L. No. 108–419, 118 Stat. 2341 (2004). *See* 69 FR 5695 (February 6, 2004).

This Act, which the President signed into law on November 30, 2004, and which became effective on May 31, 2005, amends the Copyright Act, title 17 of the United States Code, by phasing out the CARP system and replacing it with three permanent Copyright Royalty Judges (CRJs). Consequently, the CRJs will carry out the functions heretofore performed by the CARPs, including the adjustment of rates and terms for certain statutory licenses such as the section 114 and 112 licenses. However, section 6(b)(3) of the Act states in pertinent part:

> [t]he rates and terms in effect under section 114(f)(2) or 112(e) . . . on December 30, 2004, for new subscription services [and] eligible nonsubscription services . . . shall remain in effect until the later of the first applicable effective date for successor terms and rates . . . or such later date as the parties may agree or the Copyright Royalty Judges may establish.

Successor rates and terms for these licenses have not yet been established. Accordingly, the terms of the section 114 and 112 licenses, as currently constituted, are still in effect.

One of the current terms, set forth in § 262.6 of title 37 of the Code of Federal Regulations, states that SoundExchange, as the Designated Agent, may conduct a single audit of a Licensee for the purpose of verifying their royalty payments. As a preliminary matter, the Designated Agent is required to submit a notice of its intent to audit a Licensee with the Copyright Office and serve this notice on the service to be audited. 37 CFR 262.6(c).

On December 23, 2005, SoundExchange filed with the Copyright Office a notice of intent to audit Beethoven for the years 2002, 2003, and 2004. *See* 72 FR 624 (January 5, 2006). Subsequently, on November 22, 2006, SoundExchange filed a second notice of intent to audit Beethoven,[2]

[1] An ''eligible nonsubscription transmission'' is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as a part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the primary purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6).

[2] A copy of the new Notice of Intent to Audit Beethoven is posted on the Copyright Office Website at http://www.copyright.gov/carp/beethoven-notice.2006.pdf.

pursuant to § 262.6(c), notifying the Copyright Office of its intent to expand its current audit to cover 2005. Section 262.6(c) requires the Copyright Office to publish a notice in the **Federal Register** within thirty days of receipt of the filing announcing the Designated Agent's intent to conduct an audit.

In accordance with this regulation, the Office is publishing today's notice to fulfill this requirement with respect to the notice of intent to audit filed by SoundExchange on November 22, 2006.

Dated: December 15, 2006

Tanya M. Sandros,

Associate General Counsel.

[FR Doc. E6–21746 Filed 12–19–06; 8:45 am]

BILLING CODE 1410–30–S

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Fund for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Fund's Loan Program throughout calendar year 2007, subject to availability of funds. Application procedures for qualified low-income credit unions are in NCUA Rules and Regulations.

ADDRESSES: Applications for participation may be obtained from and should be submitted to: NCUA, Office of Small Credit Union Initiatives, 1775 Duke Street, Alexandria, VA 22314–3428.

DATES: Applications may be submitted throughout calendar year 2007.

FOR FURTHER INFORMATION CONTACT: Tawana James, Director, Office of Small Credit Union Initiatives at the above address or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA Rules and Regulations implements the Community Development Revolving Loan Fund (Fund) for Credit Unions. The purpose of the Fund is to assist officially designated ''low-income'' credit unions in providing basic financial services to residents in their communities that result in increased income, home ownership, and employment. The Fund makes available low interest loans in the aggregate amount of $300,000 to qualified participating ''low-income'' designated credit unions. Interest rates are currently set at one percent. Specific details regarding availability and requirements for technical assistance grants from the Fund will be published in a Letter to Credit Unions and on NCUA's Web site at *http://www.ncua.gov/*. Fund participation is limited to existing credit unions with an official ''low-income'' designation.

This notice is published pursuant to Section 705.9 of the NCUA Rules and Regulations that states NCUA will provide notice in the **Federal Register** when funds in the program are available.

By the National Credit Union Administration Board on December 13, 2006.

Mary F. Rupp,

Secretary, NCUA Board.

[FR Doc. E6–21664 Filed 12–19–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Board announces the following meeting:

Date and Time: Friday, December 22, 2006, 11 a.m.–12:30 p.m. EST (teleconference meeting)

Place: National Science Foundation, Arlington, Virginia, Room 1235 will be available to the public to listen to this teleconference meeting.

Type of Meeting: Open.

Contact Person: Dr. Elizabeth Strickland, Commission Executive Secretary, National Science Board Office, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–292–4527. E-mail: *estrickl@nsf.gov.*

Purpose of Meeting: To discuss preliminary draft recommendations of the Commission.

Agenda: Discussion of preliminary draft recommendations of the Commission.

Reason for Late Notice: Time and date of meeting were not established until December 12, 2006.

Russell Moy,

Attorney-Advisor.

[FR Doc. E6–21618 Filed 12–19–06; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC/the Commission) has granted the request of Omaha Public Power District (OPPD, the licensee) to withdraw its August 11, 2005, application for proposed amendment to Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

The proposed amendment would have revised the Technical Specifications (TSs) pertaining to the volume of trisodium phosphate (TSP) needed in containment. Specifically, this proposed change would have revised TS Figure 2–3, ''TSP Volume Required for RCS [Reactor Coolant System] Critical Boron Concentration (ARO [All Rods Out], HZP [Hot Zero Power], No Xenon),'' and related technical information used for calculating minimum volumes of TSP required for maintaining sump pH equal to or greater than 7. The amendment was necessary to account for the increase in the RCS volume as result of the planned replacement of the steam generators and pressurizer. The amendment is no longer needed since the NRC staff has approved the OPPD amendment dated August 21, 2006, to remove the TSP and replace it with sodium tetraborate.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 27, 2005 (70 FR 56502). However, by letter dated November 30, 2006, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 11, 2005, as supplemented by letter dated November 3, 2005, and the licensee's letter dated November 30, 2006, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-*

rm.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of December 2006.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–21673 Filed 12–19–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection: Comment Request for Review of New Information Collection Form: OPM Optional Form XX

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the U.S. Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a new information collection document. Optional Form (OF) XX, Certificate of Medical Examination replaces the existing Civil Service Commission Standard Form (SF) 78, Certificate of Medical Examination, which was last revised in October 1969. Replacement is necessary because the SF–78 is no longer accurate. Revisions include making the form optional for agencies, incorporating changes required by 29 CFR 1630.13, which addresses prohibited medical examinations and inquiries, and deleting references to the Federal Personnel Manual and other outdated references.

It will be used to collect medical information about individuals who are incumbents of positions which require physical fitness/agility testing and medical examinations, or who have been selected for such a position contingent upon meeting physical fitness/agility testing and medical examinations as a condition of their employment. This information is needed to ensure fair and consistent treatment of employees and job applicants, to adjudicate requests to pass over preference eligibles, and to adjudicate claims of discrimination under the Americans with Disabilities Act (ADA).

Approximately 45,000 forms are submitted annually. It takes approximately 30 total minutes to complete the form. The annual estimated burden is 22,500 hours.

Comments are particularly invited on:

• Whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;

• Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology;

• Ways we can enhance the quality, utility and clarity of the information collected; and

• Ways we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251, or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—J. C. Phillip Spottswood, J.D., M.P.H. by telephone at (202) 606–1389, by TTY at (202) 418–3134; by fax at (202) 606–0864; or by e-mail at *phil.spottswood@opm.gov.*

Linda M. Springer,

Director, U.S. Office of Personnel Management.

[FR Doc. E6–21647 Filed 12–19–06; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27598; 812–13133]

Members Mutual Funds, et al.; Notice of Application

December 13, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts (''UITs'') that are within and outside the same group of investment companies.

Applicants: MEMBERS Mutual Funds (''MMF''), ULTRA Series Fund (''USF'') (each a ''Trust'', and together, the ''Trusts''), Members Capital Advisors, Inc. (''MCA''), and CUNA Mutual Life Insurance Company (''CUNA Mutual'') (collectively, the ''Applicants''). Applicants request that the order also extend to any future series of the Trusts, and any other existing or future registered open-end management investment companies and any series thereof that are part of the same group of investment companies as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts and are, or may in the future be, advised by MCA or any other investment adviser controlling, controlled by, or under common control with MCA (together with the existing series of the Trusts, the ''Funds'').

FILING DATES: The application was filed on October 29, 2004 and amended on March 24, 2006 and December 6, 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 January 8, 2007, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: CUNA Mutual Group, 5910 Mineral Point Road, Madison, Wisconsin 53701–0391.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Nadya Roytblat, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk,

100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. CUNA Mutual is a life insurance company organized under the laws of Iowa. Through separate accounts (''Separate Accounts'') registered under the Act as UITs (the ''Registered Separate Accounts'') and a separate account not registered under the Act (the ''Unregistered Separate Account''), CUNA Mutual issues group and individual variable annuity contracts and variable life insurance policies (the ''Variable Contracts'') which offer the owners of such contracts the opportunity to indirectly invest in USF.

2. MMF is a statutory trust organized under the laws of Delaware and USF is a business trust organized under the laws of Massachusetts. Both Trusts are registered under the Act as open-end management investment companies. MMF and USF currently offer twelve and thirteen separate Funds, respectively. MCA, an Iowa corporation, is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

3. Applicants request relief to permit (a) a Fund (a ''Fund of Funds'') to acquire shares of registered open-end management investment companies that are not part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (the ''Unaffiliated Underlying Funds''), (b) the Fund of Funds to acquire shares of UITs that are not part of the same group of investment companies as the Fund of Funds (the ''Unaffiliated Underlying Trusts''), (c) the Unaffiliated Underlying Funds and Trusts (collectively, the ''Unaffiliated Funds'') to sell their shares to the Fund of Funds, (d) the Fund of Funds to acquire shares of certain other Funds in the same group of investment companies as the Fund of Funds (the ''Affiliated Funds,'' and together with the Unaffiliated Funds, the ''Underlying Funds'') and (e) the Affiliated Funds to sell their shares to the Fund of Funds. Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares be listed and traded on a national securities exchange at negotiated prices (''ETFs''). Each Fund of Funds also may invest in other securities and financial instruments. Applicants state that a Fund of Funds will provide an efficient and simple method of allowing investors to create a comprehensive asset allocation program.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Funds of Funds to acquire shares of the Underlying Funds and to permit the Underlying Funds, their principal underwriters and any broker or dealer to sell shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a Fund of Funds or its affiliated persons over Underlying Funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, applicants propose a condition prohibiting: (a) MCA and any person controlling, controlled by or under common control with MCA, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by MCA or any person controlling, controlled by or under common control with MCA (collectively, the ''Group''), and (b) any investment adviser within the meaning of section 2(a)(20)(B) of the Act (''Sub-Adviser'') to a Fund of Funds, any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the ''Sub-Adviser Group'') will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 precludes a Fund of Funds and MCA, any Sub-Adviser, promoter or principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of those entities (each, a ''Fund of Funds Affiliate'') from taking advantage of an Unaffiliated Fund, with respect to transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or the Unaffiliated Fund's investment adviser(s), sponsor, promoter, principal underwriter or any person controlling, controlled by or under common control with any of these entities (each, an ''Unaffiliated Fund Affiliate''). Condition 5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) from causing an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, trustee, member of an advisory board, investment adviser, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, Sub-Adviser, member of an advisory board, or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting

Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in the Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), condition 8 requires that the Fund of Funds and Unaffiliated Underlying Fund execute an agreement stating, without limitation, that their boards of directors or trustees (''Boards'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an Unaffiliated Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment by a Fund of Funds.[1]

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that MCA will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Underlying Fund pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by MCA, or an affiliated person of MCA, other than any advisory fees paid to MCA or an affiliated person of MCA by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

8. Applicants state that with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees (as defined in Rule 2830 of the Conduct Rules of the NASD, (''Rule 2830'')), if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to funds of funds as set forth in Rule 2830.[2]

9. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Fund: (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions. Applicants also represent that a Fund of Funds' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the proposed Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Underlying Funds.[3]

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds might be deemed to be under common control of MCA and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds might be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.[4]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each

[1] An Unaffiliated Fund, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[2] With respect to an investment by a Registered Separate Account in a Fund of Funds, the aggregate of all fees and charges at all levels will be reasonable in relation to the services rendered, the expenses expected to be incurred and the risks assumed by the applicable parties. This representation includes the fees and charges paid to CUNA Mutual and CUNA Mutual Insurance Society or any other insurance company controlling, controlled by, or under common control with CUNA Mutual.

[3] Each Fund of Funds also will comply with the disclosure requirements concerning the aggregate expenses of investing in Underlying Funds set forth in Investment Company Act Release No. 27399.

[4] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Funds of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of a Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgement.

Underlying Fund.[5] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of the Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or the Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Sub-Adviser Group (except for any member of the Group or the Sub-Adviser Group that is a Separate Account) will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to the Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Underlying Fund) or as the sponsor (in the case of an Unaffiliated Underlying Trust).

A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either: (i) vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that MCA and any Sub-Adviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Underlying Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Underlying Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Underlying Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Underlying Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Underlying Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Underlying Fund. The Board of the Unaffiliated Underlying Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of an Unaffiliated Underlying Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired, (b) identity of the underwriting syndicate's members, (c) terms of the purchase, and (d) information or materials upon which the determinations of the Board of the

[5] Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. A Fund of Funds could seek to transact in ''Creation Units'' directly with an ETF pursuant to the requested section 17(a) relief.

Unaffiliated Underlying Fund were made.

8. Prior to its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Underlying Fund will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Underlying Fund of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Underlying Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Disinterested Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. MCA will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Underlying Fund pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by MCA, or an affiliated person of MCA, other than any advisory fees paid to MCA or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Underlying Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21656 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54936; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Effectiveness of Amendment No. 18 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, Submitted by the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the National Stock Exchange, Inc., the Nasdaq Stock Market LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

December 14, 2006.

I. Introduction and Description

Notice is hereby given that on December 13, 2006, the operating committee (''Operating Committee'' or ''Committee'') [1] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan pursuant to Rule 608 under the Securities Exchange Act of 1934 (the ''Act'') [2]. This amendment represents Amendment 18 made to the Plan and reflects the modification of the Access Section to be consistent with Rule 610 of Regulation NMS.[3] Amendment 18 was unanimously approved by the Committee on August 17, 2006.[4] The Commission is publishing this notice of filing and effectiveness to solicit comments from

[1] The Plan Participants (collectively, ''Participants'') are: the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange, Inc. (''ISE''), the National Association of Securities Dealers, Inc. (''NASD''), the National Stock Exchange, Inc. (''NSX''), the Nasdaq Stock Market LLC (''Nasdaq''), NYSE Arca, Inc. (''NYSEArca''), and the Philadelphia Stock Exchange, Inc. (''Phlx'').

[2] 17 CFR 242.608.

[3] 17 CFR 242.610.

[4] *See* letter from Bridget M. Farrell, Chairman, OTC/UTP Operating Committee, to Nancy M. Morris, Secretary, Commission, dated December 12, 2006.

interested persons on Amendment No. 18.

II. Background

The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for the Nasdaq Global Market and Nasdaq Capital Market securities listed on Nasdaq or traded on an exchange pursuant to unlisted trading privileges (''UTP'').[5] The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers, and others of quotation and transaction information in Eligible Securities.[6]

The Commission originally approved the Plan on a pilot basis on June 26, 1990.[7] The parties did not begin trading until July 12, 1993; accordingly, the pilot period commenced on July 12, 1993. The pilot approval of the Plan was most recently extended on December 5, 2005.[8]

III. Description and Purpose of the Amendment[9]

Section IX of the Plan, entitled ''Market Access,'' describes the access requirements that are applicable to the Plan Participants. Amendment No. 18 eliminates the existing Market Access language and replaces it with language consistent with Rule 610 of Regulation NMS.[10]

IV. Date of Effectiveness of the Amendment

The changes set forth in Amendment No. 18 have been designated by the Participants as involving solely technical or ministerial matters, and thus are being put into effect upon filing with the Commission pursuant to Rule 608(b)(3)(iii).[11] At any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that the amendment be refiled in accordance with paragraph (a)(1) of Rule 608 under the Act[12] and reviewed in accordance with paragraph (b)(2) of Rule 608 under the Act,[13] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.[14]

V. Solicitation of Comments

The Commission seeks general comments on Amendment No. 18. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 S7–24–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–24–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the Office of the Secretary of the Committee, currently located at NYSE Arca, Inc., 100 South Wacker Drive, Suite 1800, Chicago, IL 60606. 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 S7–24–89 and should be submitted on or before January 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

Exhibit A

Amendment No. 18; Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis

The undersigned registered national securities association and national securities exchanges (collectively referred to as the ''Participants''), have jointly developed and hereby enter into this Nasdaq Unlisted Trading Privileges Plan (''Nasdaq UTP Plan'' or ''Plan'').

I. Participants

The Participants include the following:

A. Participants

1. American Stock Exchange LLC, 86 Trinity Place, New York, New York 10006.
2. Boston Stock Exchange, 100 Franklin Street, Boston, Massachusetts 02110.
3. Chicago Stock Exchange, 440 South LaSalle Street, Chicago, Illinois 60605.
4. Chicago Board Options Exchange, Inc., 400 South LaSalle Street, 26th Floor, Chicago, Illinois 60605.
5. International Securities Exchange, Inc., 60 Broad Street, New York, New York 10004.
6. National Association of Securities, Dealers, Inc., 1735 K Street, NW., Washington, DC 20006.
7. National Stock Exchange, Inc., 440 South LaSalle Street, 26th Floor, Chicago, Illinois 60605.
8. NYSE Arca, Inc., 100 South Wacker Drive, Suite 1800, Chicago, IL 60606.
9. Philadelphia Stock Exchange, 1900 Market Street, Philadelphia, Pennsylvania 19103.

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[5] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits an exchange to extend UTP to any security that is listed and registered on a national securities exchange. Nasdaq began operating as a national securities exchange for Nasdaq-listed securities on August 1, 2006, *see* Securities Exchange Act Release No. 54241 (July 31, 2006), 71 FR 45359 (August 8, 2006).

[6] The Plan defines ''Eligible Securities'' as any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASDAQ Rule 4200.

[7] *See* Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990).

[8] *See* Securities Exchange Act Release No. 52886, 70 FR 74059 (December 14, 2005).

[9] The complete text of the Plan, as amended by Amendment No. 18, is attached as Exhibit A.

[10] *See* 17 CFR 242.610. However, as Amendment No. 18 states, for Eligible Securities that are displayed by a Participant that operates an SRO trading facility that is not an NMS Compliant Facility, the telephone access requirement, which was included in the Market Access section before this Amendment No. 18 became effective, will continue to be applicable to the Participant.

[11] 17 CFR 242.608(b)(3)(iii).

[12] 17 CFR 242.608(a)(1).

[13] 17 CFR 242.608(b)(2).

[14] 17 CFR 242.608(b)(3)(iii).

[15] 17 CFR 200.30–3(a)(27).

10. The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006.

B. Additional Participants

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan and pays its share of development costs as specified in Section XIII.

II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act.

It is expressly understood that each Participant shall be responsible for the collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

III. Definitions

A. *Current* means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

B. *Eligible Security* means any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASDAQ Rule 4200. Eligible Securities under this Nasdaq UTP Plan shall not include any security that is defined as an ''Eligible Security'' within Section VII of the Consolidated Tape Association Plan.

A security shall cease to be an Eligible Security for purposes of this Plan if: (i) The security does not substantially meet the requirements from time to time in effect for continued listing on Nasdaq, and thus is suspended from trading; or (ii) the security has been suspended from trading because the issuer thereof is in liquidation, bankruptcy or other similar type proceedings. The determination as to whether a security substantially meets the criteria of the definition of Eligible Security shall be made by the exchange on which such security is listed provided, however, that if such security is listed on more than one exchange, then such determination shall be made by the exchange on which, the greatest number of the transactions in such security were effected during the previous twelve-month period.

C. *Commission* and *SEC* shall mean the U.S. Securities and Exchange Commission.

D. *Exchange Act* means the Securities Exchange Act of 1934.

E. *Market* shall mean (i) When used with respect to Quotation Information, the NASD in the case of an NASD Participant, or the Participant on whose floor or through whose facilities the quotation was disseminated; and (ii) when used with respect to Transaction Reports, the Participant through whose facilities the transaction took place or is reported, or the Participant to whose facilities the order was sent for execution.

F. *NASD* means the National Association of Securities Dealers Inc.

G. *NASD Participant* means an NASD member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of the NASD pursuant to applicable NASD rules.

H. *Transaction Reporting System* means the System provided for in the Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule11Aa3–1, subsequently re-designated as Rule 601 of Regulation NMS, governing the reporting of transactions in Nasdaq securities.

I. *UTP Quote Data Feed* means the service that provides Subscribers with the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities and, in the case of NASD, the NASD Participant(s) that constitute NASD's Best Bid and Offer quotations.

J. *Nasdaq System* means the automated quotation system operated by Nasdaq.

K. *UTP Trade Data Feed* means the service that provides Vendors and Subscribers with Transaction Reports.

L. *Nasdaq Security* or *Nasdaq-listed Security* means any security listed on the Nasdaq Global Market or Nasdaq Capital Market.

M. *News Service* means a person that receives Transaction Reports or Quotation Information provided by the Systems or provided by a Vendor, on a Current basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor.

N. *OTC Montage Data Feed* means the data stream of information that provides Vendors and Subscribers with quotations and sizes from each NASD Participant.

O. *Participant* means a registered national securities exchange or national securities association that is a signatory to this Plan.

P. *Plan* means this Nasdaq UTP Plan, as from time to time amended according to its provisions, governing the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities.

Q. *Processor* means the entity selected by the Participants to perform the processing functions set forth in the Plan.

R. *Quotation Information* means all bids, offers, displayed quotation sizes, the market center identifiers and, in the case of NASD, the NASD Participant that entered the quotation, withdrawals and other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processor pursuant to this Plan.

S. *Regulatory Halt* means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue, including a trading halt for extraordinary market activity due to system misuse or malfunction under Section X.E.1. of the Plan (''Extraordinary Market Regulatory Halt'').

T. *Subscriber* means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

U. *Transaction Reports* means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities.

V. *Upon Effectiveness of the Plan* means July 12, 1993, the date on which the Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan.

W. *Vendor* means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, in

connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

IV. Administration of Plan

A. Operating Committee: Composition

The Plan shall be administered by the Participants through an operating committee (''Operating Committee''), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or actions taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization (''Organization'') which is not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants and their representatives to participate on the Operating Committee in any manner other than as an advisor or observer, or in any Executive Session of the Operating Committee.

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;

2. Periodically evaluating the Processor;

3. Setting the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;

4. Determining matters involving the interpretation of the provisions of the Plan;

5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; and

6. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Amendments to the Plan;

b. Amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities;

c. Replacement of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof;

d. Reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities; and

e. Except as provided under Section IV(C)(3) hereof, requests for system changes; and

f. all other matters not specifically addressed by the Plan.

2. With respect to the establishment of new fees or increases in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities, the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee.

3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Requests for system changes reasonably related to the function of the Processor as defined under the Plan. All other requests for system changes shall be governed by Section IV(C)(1)(e) hereof.

b. Interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;

c. Interpretive matters arising under Rules 601 and 602 of Regulation NMS; and

d. Denials of access (other than for breach of contract, which shall be handled by the Processor),

4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace, or, in the case of the NASD, from NASD Participants.

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a ⅔ majority vote of all Participants, a quorum of at least ⅔ of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private

mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section C above.

Any action may be taken without a meeting if a consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee. Meetings may be held by conference telephone and action may be taken without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

E. Advisory Committee

(a) *Formation.* Notwithstanding any other provision of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(b) *Composition.* Members of the Advisory Committee shall be selected for two-year terms as follows:

(1) *Operating Committee Selections.* By affirmative vote of a majority of the Participants entitled to vote, the Operating Committee shall select at least one representative from each of the following categories to be members of the Advisory Committee: (i) A broker-dealer with a substantial retail investor customer base, (ii) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trade system, (iv) a data vendor, and (v) an investor.

(2) *Participant Selections.* Each Participant shall have the right to select one member of the Advisory Committee. A Participant shall not select any person employed by or affiliated with any participant or its affiliates or facilities.

(c) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan.

(d) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend all meetings of the Operating Committee and to receive any information concerning Plan matters that is distributed to the Operating Committee; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants entitled to vote, the Operating Committee determines that an item of Plan business requires confidential treatment.

V. Selection and Evaluation of the Processor

A. Generally

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

C. Factors To Be Considered in Termination for Cause

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to Section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor.

D. Processor's Right to Appeal Termination for Cause

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

E. Process for Selecting New Processor

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to Section IV(C)(1)(c) or V(B) of the Plan or upon the Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the ''Selection Procedures''). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The Selection Procedures shall be established by a two-thirds majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

(a) Draft the Operating Committee's request for proposal for bids on a new processor;

(b) Assist the Operating Committee in evaluating bids for the new processor; and

(c) Otherwise provide assistance and guidance to the Operating Committee in the selection process.

2. The minimum technical and operational requirements to be fulfilled by the Processor;

3. The criteria to be considered in selecting the Processor; and

4. The entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

Nothing in this provision shall be interpreted as limiting Participants'

rights under Section IV or Section V of the Plan or other Commission order.

VI. Functions of the Processor

A. Generally

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services. For so long as Nasdaq is not registered as a national securities exchange and for so long as Nasdaq is the Processor, the Processor shall also collect, consolidate, and disseminate the quotation information contained in NQDS. For so long as Nasdaq is not registered as a national securities exchange and after Nasdaq is no longer the Processor for other SIP datafeeds, either Nasdaq or a third party will act as the Processor to collect, consolidate, and disseminate the quotation information contained in NQDS.

C. Dissemination of Information

The Processor shall disseminate consolidated Quotation Information and Transaction Reports in Eligible Securities via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to authorized Vendors, Subscribers and News Services in a fair and non-discriminatory manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants.

Nothing herein shall be construed so as to prohibit or restrict in any way the right of any Participant to distribute quotation, transaction or other information with respect to Eligible Securities quoted on or traded in its marketplace to a marketplace outside the United States solely for the purpose of supporting an intermarket linkage, or to distribute information within its own marketplace concerning Eligible Securities in accordance with its own format. If a Participant requests, the Processor shall make information about Eligible Securities in the Participant's marketplace available to a foreign marketplace on behalf of the requesting Participant, in which event the cost shall be borne by that Participant.

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD Participant(s) that constitute NASD's single Best Bid and Offer quotations, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including the NASD.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output lines (*i.e.*, a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Quotation Data Streams

The Processor shall disseminate on the UTP Quote Data Feed a data stream of all Quotation Information regarding Eligible Securities received from Participants. Each quotation shall be designated with a symbol identifying the Participant from which the quotation emanates and, in the case of NASD, the NASD Participant(s) that constitute NASD's Best Bid and Offer quotations. In addition, the Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all NASD Participants from which quotations emanate. The Processor shall separately distribute NQDS for so long as Nasdaq is not registered as a national securities exchange and for so long as Nasdaq is the Processor. For so long as Nasdaq is not registered as a national securities exchange and after Nasdaq is no longer the Processor for other SIP datafeeds, either Nasdaq or a third party will act as the Processor to collect, consolidate, and disseminate the quotation information contained in NQDS.

3. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place.

D. Closing Reports

At the conclusion of each trading day, the Processor shall disseminate a ''closing price'' for each Eligible Security. Such ''closing price'' shall be the price of the last Transaction Report in such security received prior to dissemination. The Processor shall also tabulate and disseminate at the conclusion of each trading day the aggregate volume reflected by all Transaction Reports in Eligible Securities reported by the Participants.

E. Statistics

The Processor shall maintain quarterly, semi-annual and annual transaction and volume statistical counts. The Processor shall, at cost to the user Participant(s), make such statistics available in a form agreed upon by the Operating Committee, such as a secure Web site.

VII. Administrative Functions of the Processor

Subject to the general direction of the Operating Committee, the Processor shall be responsible for carrying out all

administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

VIII. Transmission of Information to Processor by Participants

A. Quotation Information

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation Information in Eligible Securities through any means prescribed herein.

Quotation Information shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;

2. the price bid and offered, together with size;

3. the NASD Participant along with the NASD Participant's market participant identification or Participant from which the quotation emanates;

4. identification of quotations that are not firm; and

5. through appropriate codes and messages, withdrawals and similar matters.

B. Transaction Reports

Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. With respect to orders sent by one Participant Market to another Participant Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Plan Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;

2. the number of shares in the transaction;

3. the price at which the shares were purchased or sold;

4. the buy/sell/cross indicator;

5. the Market of execution; and,

6. through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as ''late'' by the appropriate code or message.

The following types of transactions are not required to be reported to the Processor pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;

2. transactions made in reliance on Section 4(2) of the Securities Act of 1933;

3. transactions in which the buyer and the seller have agreed to trade at a price unrelated to the Current Market for the security, *e.g.*, to enable the seller to make a gift;

4. odd-lot transactions;

5. the acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

6. purchases of securities pursuant to a tender offer; and

7. purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the Current Market.

C. Symbols for Market Identification for Quotation Information and Transaction Reports

The following symbols shall be used to denote the marketplaces:

Code	Participant
A	American Stock Exchange LLC
B	Boston Stock Exchange, Inc.
W	Chicago Board Options Exchange, Inc.
M	Chicago Stock Exchange, Inc.
I	International Securities Exchange, Inc.
D	NASD
Q	Nasdaq Stock Market LLC
C	National Stock Exchange, Inc.
P	NYSE Arca, Inc.
X	Philadelphia Stock Exchange, Inc.

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, the Participant shall promptly notify the Processor of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

IX. Market Access

Consistent with the state of electronic technology and pursuant to the requirements of Rule 610 of Regulation NMS, a Participant that operates an SRO trading facility shall provide for fair and efficient order execution access to quotations in each Eligible Security displayed through its trading facility. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility must provide for fair and efficient order execution access to quotations in each Eligible Security displayed through the SRO display-only quotation facility. A Participant that operates an SRO trading facility may elect to allow such access to its quotations through the utilization of private electronic linkages between the Participant and other trading centers. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility may elect to allow such access to their quotations through the utilization of private electronic linkages between the trading center and SRO trading facilities of Plan Participants and/or other trading centers.

In accordance with Regulation NMS, a Participant shall not impose, or permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the Participant or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security or against any other quotation displayed by the Participant in an Eligible Security that is the Participant's displayed best bid or offer for that Eligible Security, where such fee or fees exceed the limits provided for in Rule 610(c) of Regulation NMS. As required under Regulation NMS, the terms of access to a Participant's quotations or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security may not be unfairly discriminatory so as to prevent or inhibit any person from obtaining efficient access to such displayed quotations through a member

of the Participant or a subscriber of a trading center.

If quotations in an Eligible Security are displayed by a Participant that operates an SRO trading facility (or are displayed by a trading center that posts quotations through an SRO display-only quotation facility) that complies with the fair and efficient access requirements of Regulation NMS (an ''NMS Compliant Facility''), including prior to the compliance date of such access requirements, that Participant (or trading center posting quotes through an SRO display-only quotation facility) shall no longer be required to permit each NASD market participant to have direct telephone access to the specialist, trading post, market maker and supervisory center in such Eligible Security that trades on that NMS Compliant Facility. For quotations in Eligible Securities that are displayed by a Participant that operates an SRO trading facility that is not an NMS Compliant Facility, such telephone access requirement will continue to be applicable to the Participant.

X. Regulatory Halts

A. Whenever, in the exercise of its regulatory functions, the Listing Market for an Eligible Security determines that a Regulatory Halt is appropriate pursuant to Section III.S, the Listing Market will notify all other Participants pursuant to Section X.E and all other Participants shall also halt or suspend trading in that security until notification that the halt or suspension is no longer in effect. The Listing Market shall immediately notify the Processor of such Regulatory Halt as well as notice of the lifting of a Regulatory Halt. The Processor, in turn, shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a regulatory halt) through the UTP Quote Data Feed. This notice shall serve as official notice of a regulatory halt for purposes of the Plan only, and shall not substitute or otherwise supplant notice that a Participant may recognize or require under its own rules. Nothing in this provision shall be read so as to supplant or be inconsistent with a Participant's own rules on trade halts, which rules apply to the Participant's own members. The Processor will reject any quotation information or transaction reports received from any Participant on an Eligible Security that has a Regulatory Halt in effect.

B. Whenever the Listing Market determines that an adequate publication or dissemination of information has occurred so as to permit the termination of the Regulatory Halt then in effect, the Listing Market shall promptly notify the Processor and each of the other Participants that conducts trading in such security pursuant to Section X.F. Except in extraordinary circumstances, adequate publication or dissemination shall be presumed by the Listing Market to have occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to the Regulatory Halt.

C. Except in the case of a Regulatory Halt, the Processor shall not cease the dissemination of quotation or transaction information regarding any Eligible Security. In particular, it shall not cease dissemination of such information because of a delayed opening, imbalance of orders or other market-related problems involving such security. During a regulatory halt, the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

D. For purposes of this Section X, ''Listing Market'' for an Eligible Security means the Participant's Market on which the Eligible Security is listed. If an Eligible Security is dually listed, Listing Market shall mean the Participant's Market on which the Eligible Security is listed that also has the highest number of the average of the reported transactions and reported share volume for the preceding 12-month period. The Listing Market for dually-listed Eligible Securities shall be determined at the beginning of each calendar quarter.

E. For purposes of coordinating trading halts in Eligible Securities, all Participants are required to utilize the national market system communication media (''Hoot-n-Holler'') to verbally provide real-time information to all Participants. Each Participant shall be required to continuously monitor the Hoot-n-Holler system during market hours, and the failure of a Participant to do so at any time shall not prevent the Listing Market from initiating a Regulatory Halt in accordance with the procedures specified herein.

1. The following procedures shall be followed when one or more Participants experiences extraordinary market activity in an Eligible Security that is believed to be caused by the misuse or malfunction of systems operated by or linked to one or more Participants.

a. The Participant(s) experiencing the extraordinary market activity or any Participant that becomes aware of extraordinary market activity will immediately use best efforts to notify all Participants of the extraordinary market activity utilizing the Hoot-n-Holler system.

b. The Listing Market will use best efforts to determine whether there is material news regarding the Eligible Security. If the Listing Market determines that there is non-disclosed material news, it will immediately call a Regulatory Halt pursuant to Section X.E.2.

c. Each Participant(s) will use best efforts to determine whether one of its systems, or the system of a direct or indirect participant in its market, is responsible for the extraordinary market activity.

d. If a Participant determines the potential source of extraordinary market activity pursuant to Section X.1.c., the Participant will use best efforts to determine whether removing the quotations of one or more direct or indirect market participants or barring one or more direct or indirect market participants from entering orders will resolve the extraordinary market activity. Accordingly, the Participant will prevent the quotations from one or more direct or indirect market participants in the affected Eligible Securities from being transmitted to the Processor.

e. If the procedures described in Section X.E.1.a.-d. do not rectify the situation, the Participant(s) experiencing extraordinary market activity will cease transmitting all quotations in the affected Eligible Securities to the Processor.

f. If the procedures described in Section X.E.1.a-e do not rectify the situation within five minutes of the first notification through the Hoot-n-Holler system, or if Participants agree to call a halt sooner through unanimous approval among those Participants actively trading impacted Eligible Securities, the Listing Market may determine based on the facts and circumstances, including available input from Participants, to declare an Extraordinary Market Regulatory Halt in the affected Eligible Securities. Simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, the Listing Market must verbally notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

g. Absent any evidence of system misuse or malfunction, best efforts will be used to ensure that trading is not halted across all Participants.

2. If the Listing Market declares a Regulatory Halt in circumstances other than pursuant to Section X.E.1.f., the Listing Market must, simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, verbally notify

all Participants of the trading halt utilizing the Hoot-n-Holler system.

F. If the Listing Market declares a Regulatory Halt, trading will resume according to the following procedures:

1. Within 15 minutes of the declaration of the halt, all Participants will make best efforts to indicate via the Hoot-n-Holler their intentions with respect to canceling or modifying transactions.

2. All Participants will disseminate to their members information regarding the canceled or modified transactions as promptly as possible, and in any event prior to the resumption of trading.

3. After all Participants have met the requirements of Section X.F.1–2, the Listing Market will notify the Participants utilizing the Hoot-n-Holler and the Processor when trading may resume. Upon receiving this information, Participants may commence trading pursuant to Section X.A.

XI. Hours of Operation

A. Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4 p.m. Eastern Time (''ET'') on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4 p.m., ET, shall be required to report such transactions as follows:

(i) Transactions in Eligible Securities executed between 4 a.m. and 9:29:59 a.m. ET and between 4:00:01 and 8 p.m. ET, shall be designated as ''.T'' trades to denote their execution outside normal market hours;

(ii) transactions in Eligible Securities executed after 8 p.m. and before 12 a.m. (midnight) shall be reported to the Processor between the hours of 4 a.m. and 8 p.m. ET on the next business day (T+1), and shall be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) transactions in Eligible Securities executed between 12 a.m. (midnight) and 4 a.m. ET shall be transmitted to the Processor between 4 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ''.T'' trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;

(iv) transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

C. Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported between the hours of 4 a.m. and 8 p.m.

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4 a.m. and 9:30 a.m. ET, and after 4 p.m. ET, when any Participant or Nasdaq market participant is open for trading, until 8 p.m. ET (the ''Additional Period''); provided, however, that the best bid and offer quotation will not be disseminated before 4 a.m. or after 8 p.m. ET. Participants that enter Quotation Information or submit Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

XII. Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

XIII. Financial Matters

A. Development Costs

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Nasdaq system made at its request and solely for its use, subject to reapportionment should any other Participant subsequently make use of the enhancement, or the development thereof.

B. Cost Allocation and Revenue Sharing

The provisions governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan.

C. Maintenance of Financial Records

The Processor shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the Processor shall provide the Participants with: (a) A statement of financial and operational condition on a quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

XIV. Indemnification

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor by such Participant and disseminated by the Processor to Vendors. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have. Promptly after receipt by an indemnified Participant of notice of the commencement of any action, such indemnified Participant will, if a claim in respect thereof is to be made against an indemnifying Participant, notify the indemnifying Participant in writing of the commencement thereof; but the omission to so notify the indemnifying Participant will not relieve the indemnifying Participant from any liability which it may have to any indemnified Participant. In case any such action is brought against any indemnified Participant and it promptly notifies an indemnifying Participant of the commencement thereof, the indemnifying Participant will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Participant similarly notified, to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Participant of its election to assume the defense thereof, the indemnifying Participant will not be liable to such indemnified Participant for any legal or other expenses subsequently incurred by such indemnified Participant in connection with the defense thereof but

the indemnified Participant may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Participant's control of the defense. The indemnifying Participant may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a contribution by the indemnified Participant.

XV. Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect.

A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including start-up costs and other sums for which it may be responsible pursuant to Section XIV hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

XVI. Modifications to Plan

The Plan may be modified from time to time when authorized by the agreement of all of the Participants, subject to the approval of the SEC or which otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 of Regulation NMS.

XVII. Applicability of Securities Exchange Act of 1934

The rights and obligations of the Participants and of Vendors, News Services, Subscribers and other persons contracting with Participant in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

XVIII. Operational Issues

A. Each Participant shall be responsible for collecting and validating quotes and last sale reports within their own system prior to transmitting this data to the Processor.

B. Each Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Exchange Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Processor's existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation

(a) The Processor may validate format for each type of message, and reject non-conforming messages.

(b) Input must be for an Eligible Security.

2. Logging Function—The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (*i.e.*, those that pass the validation check), the information shall be retained in the Processor system.

XIX. Headings

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

XX. Counterparts

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

XXI. Depth of Book Display

The Operating Committee has determined that the entity that succeeds Nasdaq as the Processor should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations while determining that no Participant shall be required to submit such information. The Operating Committee has further determined that the costs of developing, collecting, processing, and disseminating such depth of book data shall be borne exclusively by those Participants that choose to submit this information to the Processor, by whatever allocation those Participants may choose among themselves. The Operating Committee has determined further that the primary purpose of the Processor is the collection, processing and dissemination of best bid, best offer and last sale information (''core data''), and as such, the Participants will adopt procedures to ensure that such functionality in no way hinders the collecting, processing and dissemination of this core data.

Therefore, implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues, including:

(1) Procedures for ensuring that the fully-loaded cost of the collection, processing, and dissemination of depth-of-book information will be tracked and invoiced directly to those Plan Participants that voluntarily choose to send that data, voluntarily, to the Processor, allocating in whatever manner those Participants might agree; and

(2) Necessary safeguards the Processor will take to ensure that its processing of depth-of-book data will not impede or hamper, in any way, its core Processor functionality of collecting, consolidating, and disseminating National Best Bid and Offer data, exchange best bid and offer data, and consolidated last sale data.

Upon approval of a Plan amendment implementing depth of book display, this article of the Plan shall be automatically deleted.

In witness whereof, this Plan has been executed as of the____day of ____, 200_, by each of the Signatories hereto.

American Stock Exchange LLC
By: _____

Boston Stock Exchange, Inc.
By: _____

Chicago Stock Exchange, Inc.
By: _____

Chicago Board Options Exchange, Inc.
By: _____

International Securities Exchange, Inc.
By: _____

NASD
By: _____

National Stock Exchange, Inc.
By: _____

NYSE Arca, Inc.
By: _____

Philadelphia Stock Exchange, Inc.
By: _____

The Nasdaq Stock Market LLC
By: _____

Exhibit 1

1. Each Participant eligible to receive revenue under the Plan will receive an annual payment for each calendar year to be determined by multiplying (i) That

Participant's percentage of total volume in Nasdaq securities reported to the Processor for that calendar year by (ii) the total distributable net operating income (as defined below) for that calendar year. In the event that total distributable net operating income is negative, each Participant eligible to receive revenue under the Plan will receive an annual bill for each calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to eligible Participants.

2. A Participant's percentage of total volume in Nasdaq securities will be calculated by taking the average of (i) The Participant's percentage of total trades in Nasdaq securities reported to the Processor for the year and (ii) the Participant's percentage of total share volume in Nasdaq securities reported to the Processor for the year (trade/volume average). For any given year, a Participant's percentage of total trades shall be calculated by dividing the total number of trades that that Participant reports to the Processor for that year by the total number of trades in Nasdaq securities reported to the Processor for the year. A Participant's total share volume shall be calculated by multiplying the total number of trades in Nasdaq securities in that year that that Participant reports to the Processor by the number of shares for each such trade. Unless otherwise stated in this agreement, a year shall run from January 1 to December 31 and quarters shall end on March 31, June 30, September 30, and December 31. Processor shall endeavor to provide Participants with written estimates of each Participant's percentage of total volume within five business days of month end.

3. For purposes of this Exhibit 1, net distributable operating income for any particular calendar year shall be calculated by adding all revenues from the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed including revenues from the dissemination of information respecting Eligible Securities to foreign marketplaces (collectively, ''the Data Feeds''), and subtracting from such revenues the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, generating, and disseminating the Data Feeds. These costs include, but are not limited to, the following:

a. The Processor costs directly attributable to creating OTC Montage Data Feed, including:

1. Cost of collecting Participant quotes into the Processor's quote engine;

2. Cost of processing quotes and creating OTC Montage Data Feed messages within the Processor's quote engine;

3. Cost of the Processor's communication management subsystem that distributes OTC Montage Data Feed to the market data vendor network for further distribution.

b. The costs directly attributable to creating the UTP Quote Data Feed, including:

1. The costs of collecting each Participant's best bid, best offer, and aggregate volume into the Processor's quote engine and, in the case of NASD, the costs of identifying the NASD Participant(s) that constitute NASD's Best Bid and Offer quotations;

2. Cost of calculating the national best bid and offer price within the Processor's quote engine;

3. Cost of creating the UTP Quote Data Feed message within the Processor's quote engine;

4. Cost of the Processor's communication management subsystem that distributes the UTP Quote Data Feed to the market data vendors' networks for further distribution.

c. The costs directly attributable to creating the UTP Trade Data Feed, including:

1. The costs of collecting each Participant's last sale and volume amount into the Processor's quote engine

2. Cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;

3. Cost of utilizing the Processor's trade engine to distribute the UTP Trade Data Feed for distribution to the market data vendors.

4. Cost of the Processor's communication management subsystem that distributes the UTP Trade Data Feed to the marker data vendors' networks for further distribution.

d. The additional costs that are shared across all Data Feeds, including:

1. Telecommunication Operations costs of supporting the Participant lines into the Processor's facilities;

2. Telecommunications Operations costs of supporting the external market data vendor network;

3. Data Products account management and auditing function with the market data vendors;

4. Market Operations costs to support symbol maintenance, and other data integrity issues;

5. Overhead costs, including management support of the Processor, Human Resources, Finance, Legal, and Administrative Services.

e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.

f. For the purposes of this provision, the following definitions shall apply:

1. ''Quote engine'' shall mean the Nasdaq's NT or Tandem system that is operated by Nasdaq to collect quotation information for Eligible Securities;

2. ''Trade engine'' shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.

4. At the time a Participant implements a Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue.

5. Processor shall endeavor to provide Participants with written estimates of each Participant's quarterly net distributable operating income within 45 calendar days of the end of the quarter, and estimated quarterly payments or billings shall be made on the basis of such estimates. All quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that each quarterly payment or billing shall be reconciled against a Participant's cumulative year-to-date payment or billing received to date and adjusted accordingly, and further provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Monthly interest shall start accruing 45 days following the month in which it is earned and accrue until the date on which the payment is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants a quarterly itemized statement setting forth the basis upon which net operating income was calculated, including a quarterly itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs and Plan revenues shall be adjusted annually

based solely on the Processor's quarterly itemized statement audited pursuant to Processor's annual audit. Processor shall pay or bill Participants for the audit adjustments within thirty days of completion of the annual audit. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

[FR Doc. E6–21708 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54938; File No. PCAOB–2006–02]

Public Company Accounting Oversight Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adjusting Implementation Schedule of Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles

December 14, 2006.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on October 31, 2006, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change described in Items I and II below, which items have been prepared by the Board. The PCAOB has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Securities Exchange Act of 1934 (''Exchange Act'') (as incorporated, by reference, into Section 107(b)(4) of the Act), which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule Change

The PCAOB is filing with the SEC an adjustment of the implementation schedule for Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles. Specifically the Board will not apply Rule 3523 to tax services provided on or before April 30, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins. The PCAOB is not proposing any textual changes to the Rules of the PCAOB.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

On July 26, 2005, the Board adopted certain rules related to registered public accounting firms' provision of tax services to public company audit clients. The rules were designed to address certain concerns related to auditor independence when auditors become involved in marketing or otherwise opining in favor of aggressive tax shelter schemes or in selling personal tax services to individuals who play a direct role in preparing the financial statements of public company audit clients. As part of this rulemaking, the Board adopted Rule 3523 to prohibit registered public accounting firms from providing any tax services to persons in a financial reporting oversight role at an audit client. Rule 3523 was approved by the Securities and Exchange Commission on April 19, 2006. Under the current implementation schedule set by the Board, Rule 3523 will not apply to tax services being provided pursuant to an engagement in process on April 19, 2006, provided that such services are completed on or before October 31, 2006.[1]

Rule 3523 applies to all tax services performed for persons in a financial reporting oversight role during the ''audit and professional engagement period.'' The Board intends to revisit the application of Rule 3523 to tax services provided during the period before a registered public accounting firm becomes auditor of record for an audit client—that is, during only the ''audit period.'' [2] Accordingly, the Board has decided to adjust the implementation schedule for Rule 3523, as it applies to tax services provided during the ''audit period,'' while it revisits this aspect of the rule. Specifically the Board will not apply Rule 3523 to tax services provided on or before April 30, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins.[3]

The implementation schedule for Rule 3523 as it applies to tax services provided during the professional engagement period remains unchanged.[4] Accordingly, as of November 1, 2006, registered public accounting firms must comply with Rule 3523 as it relates to tax services provided during the professional engagement period.

(b) Statutory Basis

The statutory basis for the proposed rule change is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Board's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Board did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act (as incorporated, by reference, into Section 107(b)(4) of the Act), in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the

[1] PCAOB Release No. 2006–001 (March 28, 2006), at 2–3.

[2] Consistent with the SEC's independence rules, 17 CFR 210.2–01(f)(5), the phrase ''audit and professional engagement period'' is defined to include two discrete periods of time. The ''audit period'' is the period covered by any financial statements being audited or reviewed. Rule 3501(a)(iii)(1). The ''professional engagement period'' is the period beginning when the accounting firm either signs the initial engagement letter or begins audit procedures and ends when the audit client or the accounting firm notifies the SEC that the client is no longer that firm's audit client. Rule 3501(a)(iii)(2).

[3] This will apply whether there is an engagement in process on April 19, 2006 or not.

[4] PCAOB Release No. 2006–001 (March 28, 2006), at 3.

PCAOB. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the requirements of Title I of 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/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number PCAOB–2006–02 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 PCAOB–2006–02. 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/pcaob.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 PCAOB. All comments received will be posted without change; we do 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 PCAOB–2006–02 and should be submitted on or before January 10, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21659 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54926; File No. SR–CBOE–2006–62]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Amending its Index Obvious Error Rule

December 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On October 30, 2006, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 24.16 (''Rule''), which is the Exchange's rule applicable to the nullification and adjustment of transactions in index options, options on exchange-traded funds (''ETFs''), and options on HOLDing Company Depository ReceiptS (''HOLDRS''). The Exchange is proposing to amend the Rule in order to: (i) re-define what constitutes an ''obvious price error;'' (ii) provide for a Market-Maker to Market-Maker adjustment of obvious price errors (currently such erroneous transactions are subject to nullification); (iii) eliminate the nullification and adjustments provisions for erroneous quantity errors; and (iv) make various non-substantive changes to the text of the Rule.

Below is the text of the proposed rule change. Proposed new language is in *italics* and proposed deletions are in [brackets].

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Rule 24.16. Nullification and Adjustment of [Index Option] Transactions *in Index Options, Options on ETFs and Options on HOLDRS*

RULE 24.16. This Rule only governs the nullification and adjustment of transactions involving index options and options on ETFs or H*O*LDR*S*[s]. Rule 6.25 governs the nullification and adjustment of transactions involving equity options. Paragraphs (a)(1), [(2),] ([6]*5*) and ([7]*6*) of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review

A member or person associated with a member may have a trade adjusted or nullified*, as provided herein*, if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) Obvious Price Error: An obvious price[ing] error will be deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed *minimum error* amount. For series trading with normal bid-ask differentials as established in Rule 8.7(b)(iv), the prescribed *minimum error* amount shall be: [(a) the greater of $0.10 or 10% for options trading under $2.50; (b) 10% for options trading at or above $2.50 and under $5; or (c) $0.50 for options trading at $5 or higher.]

Fair market value	Minimum error amount
Below $2	$0.125
$2 to $5	$0.20
Above $5 to $10	$0.25
Above $10 to $20	$0.40
Above $20	$0.50

For series trading with bid-ask differentials that are [greater than]*a multiple of* the widths established in Rule 8.7(b)(iv), the prescribed *minimum* error amount shall *have the same multiple applied to the minimum error amount prescribed above*[be: (a) the greater of $0.20 or 20% for options trading under $2.50; (b) 20% for options trading at or above $2.50 and under $5;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 (''Amendment No. 1'') supersedes and replaces the original filing in its entirety. The substance of Amendment No. 1 is incorporated into this notice.

or (c) $1.00 for options trading at $5 or higher].

(i) Definition of Fair Market Value: For purposes of this Rule only, the fair market value of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply listed issues, if there are no quotes for comparison purposes, fair market value shall be determined by Trading Officials. For singly-listed issues, fair market value shall be the *midpoint of the* first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). For transactions occurring as part of the Rapid Opening System (''ROS trades'') or Hybrid Opening System (''HOSS''), fair market value shall be the *midpoint of the* first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). *The determination of fair market value shall be made by Trading Officials in accordance with the provisions of this paragraph.*

(ii) Price Adjustment or Nullification: Obvious price errors will be adjusted or nullified in accordance with the following:

(A) Transactions between CBOE Market-Makers: Where both parties to the transaction are CBOE Market-Makers, the execution price of the transaction will be adjusted by Trading Officials upon notification pursuant to paragraph (b) and in accordance with the adjustment and nullification provisions of paragraph (c)(1) below.

(B) Transactions involving at least one non-CBOE Market-Maker: Where one of the parties to the transaction is not a CBOE Market-Maker, the transaction will be adjusted or nullified by Trading Officials upon notification pursuant to paragraph (b) and in accordance with the adjustment and nullification provisions of paragraph (c)(3) below.

[(2) Obvious Quantity Error: An obvious error in the quantity term will be deemed to occur when the transaction size exceeds the responsible broker or dealer's average disseminated size over the previous four hours by a factor of five (5) times. The quantity to which a transaction shall be adjusted from an obvious quantity error shall be the responsible broker or dealer's average disseminated size over the previous four trading hours (which may include the previous trading day).]

(3)–(7) Renumbered to (2)–(6)

(b) No change.

(c) Adjustments *and Nullifications*

(1) Transactions between CBOE Market-Makers pursuant to paragraph (a)(1) shall be adjusted to the fair market value minus (plus) the prescribed minimum error amount with respect to an erroneous sell (buy) transaction. If the adjusted price is not in a multiple of the applicable minimum trading increment, the adjusted price will be rounded down (up) to the next price that is a multiple of the applicable minimum trading increment with respect to an erroneous sell (buy) transaction.

(2) Transactions between CBOE Market-Makers pursuant to paragraphs (a)(2)–(a)(5) shall be nullified.

*(3) [*Unless otherwise specified in Rule 24.16(a)(1)–(6), t]*T*ransactions *involving at least one non-CBOE Market-Maker pursuant to paragraphs (a)(1) through (a)(5)* will be adjusted provided the adjusted price does not violate the [customer's]*non-CBOE Market-Maker's* limit price. Otherwise, the transaction will be nullified. With respect to Rule 24.16(a)(1)*(ii)(B)–(a)(4)*[(5)], the price to which a transaction shall be adjusted shall be the National Best Bid (Offer) immediately following the erroneous transaction with respect to a sell (buy) order entered on the Exchange. For ROS or HOSS transactions, the price to which a transaction shall be adjusted shall be based on the first non-erroneous quote after the erroneous transaction on CBOE. With respect to Rule 24.16(a)([6]*5*), the transaction shall be adjusted to a price that is $0.10 under parity.

(d)–(e) No change.

* * * Interpretations and Policies:

.01–.02 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make various amendments to CBOE Rule 24.16, which is its obvious error rule pertaining to index options, options on ETFs, and options on HOLDRS. First, the Exchange states that the proposal would revise the scale used to identify the minimum error amount necessary to constitute an obvious price error. Specifically, an ''obvious price error'' would be deemed to have occurred for series trading with normal bid-ask differentials as established in CBOE rule 8.7(b)(iv) when the execution price of a transaction is above or below the fair market value of the option by at least: $0.125 for options trading under $2; $0.20 for options trading at or above $2 and up to $5; $0.25 for options trading above $5 and up to $10; $0.40 for options trading above $10 and up to $20; and $0.50 for options trading above $20. For series trading with bid-ask differentials that are a multiple of the widths established in CBOE rule 8.7(b)(iv), the prescribed error amount would have the same multiple applied to the amounts prescribed above. For example, if double-wide bid-ask relief has been granted in an option that currently trades at a price of $6, the minimum error amount would be $0.50 above or below the fair market value.[4]

Second, the Exchange states that the proposal would revise the obvious price error provision as it relates to the handling of transactions involving only CBOE Market-Makers. Under the current rule, such erroneous price transactions are nullified. Under the proposal, these CBOE-Market-Maker-to-CBOE-Market-Maker transactions would be subject to adjustment.[5] The Exchange states that

[4] The Exchange states that under the current rule, an ''obvious pricing error'' is deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed amount. For series trading with normal bid-ask differentials as established in CBOE rule 8.7(b)(iv), the prescribed amount is: (a) the greater of $0.10 or 10% for options trading under $2.50; (b) 10% for options trading at or above $2.50 and under $5; or (c) $0.50 for options trading at $5 or higher. For series trading with bid-ask differentials that are greater than the widths established in CBOE rule 8.7(b)(iv), the prescribed error amount is: (a) The greater of $0.20 or 20% for options trading under $2.50; (b) 20% for options trading at or above $2.50 and under $5; or (c) $1.00 for options trading at $5 or higher. *See* CBOE rule 24.16(a)(1). The Exchange states that the definition of fair market value will continue to apply as it currently does today. However, the Exchange is proposing to clarify in the text of the rule that, with respect to singly-listed issues and transactions occurring as part of ROS or HOSS, the fair market value is the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). Additionally, the Exchange is proposing to clarify that the determination of fair market value is made by Trading Officials in accordance with the provisions of CBOE rule 24.16(a)(1)(i). Telephone conference between Michou H.M. Nguyen, Special Counsel, Division of Market Regulation, Commission, and Jennifer Lamie, Managing Senior Attorney, Exchange, on October 31, 2006.

[5] The Exchange states that the proposed revisions to the text of the rule make clear that the manner

this change is intended to address feedback from Exchange members that an adjustment is preferential to having a transaction nullified because in many instances the CBOE Market-Makers that are parties to the transaction may have already hedged the option position before being alerted to the erroneous price error. The CBOE notes that the change is also consistent with the Exchange's current procedures for adjusting erroneous price errors in equity options involving CBOE Market-Makers.[6]

The Exchange states that in applying the proposed CBOE Market-Maker adjustment provision to index options/ETF/HOLDRS, the adjustment price would be equal to the fair market value of the option minus the minimum error amount in the case of an erroneous sell transaction or the fair market value plus the minimum error amount in the case of an erroneous buy transaction. If the adjusted price is not in a multiple of the applicable minimum trading increment, the adjusted price would be rounded down (up) to the next price that is a multiple of the applicable minimum trading increment with respect to an erroneous sell (buy) transaction. For example, if an erroneous sale transaction involving two CBOE Market-Makers occurred in an option with a fair market value of $6.075 and a minimum trading increment of $0.10, the adjusted price would be $5.80 ($6.075 − $0.25 = $5.825, which is rounded down to the nearest $0.10 increment of $5.80).

Third, the Exchange states that the proposal would eliminate obvious quantity errors as a type of transaction that is subject to obvious error review. The Exchange represents that elimination of this provision is consistent with the Exchange's current rule for equity options, which does not have an obvious error review for quantity errors.[7]

Fourth, the Exchange states that the proposal would make various non-substantive changes to CBOE rule 24.16, such as making cross-reference updates to correspond to the above-described revisions, changing the title of the rule to reflect its application to options on ETFs and HOLDRS (currently the title only references index options), clarifying that fair market value is as determined by Exchange Trading Officials who administer the obvious error rule, and making other non-substantive changes for ease of understanding the existing text.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, as amended, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–62 and should be submitted on or before January 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21654 Filed 12–19–06; 8:45 am]

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in which obvious price errors involving at least one non-CBOE Market-Maker are handled will continue to apply unchanged. In addition, the proposed revisions to the text of the rule make clear that the manner in which other obvious errors (*i.e.*, obvious errors related to verifiable disruptions or malfunctions of Exchange systems, erroneous prints or quotes in the underlying, trades below intrinsic value, and no bid series) will also continue to apply unchanged. *See* proposed revisions to CBOE rule 24.16(c).

[6] *See* CBOE rule 6.25(a)(1).

[7] *See* CBOE rule 6.25(a).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54922; File No. SR–CHX–2006–36]

Self Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participant Fees and Credits

December 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Credits (the ''Fee Schedule'') to include a fee for receiving orders routed through the CHX communications or routing functionality. The text of this proposed rule change is available on the Exchange's Web site (*http://www.chx.com/rules/proposed__rules.htm*) at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 Changes

1. Purpose

As part of the Exchange's new trading model, the Exchange proposes to operate a neutral communications service that allows its participants to route orders to any destination connected to the CHX's network. This service would allow participants to route orders to market makers or other broker-dealers connected to the CHX's network, which provide order handling and execution services in the over-the-counter market; and to other destinations (including order-routing vendors) that are connected to the CHX's network.[5] (To the extent that this service routes orders to destinations other than the Exchange and its institutional brokers, it is called the Exchange's ''wide area network'' or ''WAN''). The WAN would not effect trade executions and would not report trades to ''the tape.'' The WAN would be a facility of the Exchange.

This proposal would establish a $5,000 monthly fee for any participant that receives orders through the WAN. The monthly fee would be prorated in the month that a participant first begins using the service, based on the participant's first date of use. The fee would not be assessed until January 1, 2007, to allow the full implementation of the Exchange's new trading model to be completed before the fee is put into effect.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members who might seek to receive orders using the WAN service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge applicable only to a member,[7] it therefore has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2006–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CHX–2006–36. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Participants would also use this communications service to route orders to the Exchange's matching System and to its institutional brokers.

[6] 15 U.S.C. 78(f)(b)(4).

[7] Under Article I, Rule 1(t) of the Exchange's rules, an Exchange '' participant'' is considered a ''member'' for all purposes under the Act.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

change that are filed with the Commission, and all written communications relating to the proposed rule changes 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 will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2006–36 and should be submitted on or before January 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21655 Filed 12–19–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54927; File No. SR-DTC–2006–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Wind-Down of a Participant

December 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 28, 2006, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on September 29, 2006, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. 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 add a new Rule 32, Wind Down of a Participant,[2] to DTC's Rules to address a situation where a participant notifies DTC that it intends to wind down its activities and DTC determines in its discretion that it must take special action in order to protect itself and its participants.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would allow DTC to make a determination that a participant is a wind-down participant and would set forth the conditions DTC using its discretion could place on a wind-down participant and the actions DTC using its discretion could take with respect to a wind-down participant to protect itself and its participants. Such actions would include restricting or modifying the wind-down participant's use of any or all of DTC's services and requiring the wind-down participant to post increased participants fund deposits. DTC would retain all of its other rights set forth in its rules and participant agreements, including the right to cease to act for the wind-down participant.

DTC believes that the proposed rule will ensure that it has the needed flexibility to appropriately manage the risks presented by an entity in crisis that remains a participant of DTC. This is particularly important to preserve orderly settlement in the marketplace and to minimize the risk of loss to DTC and its participants. The proposed rule summarizes in a single rule DTC's rights and the actions it may take in such a situation. These rights and actions are either permitted elsewhere in DTC's rules or are permitted pursuant to DTC's emergency authority. By summarizing them in a single rule, however, the proposed rule change should provide clarity and a clear legal basis for DTC's rights or actions taken with respect to a wind-down participant. DTC also believes that the proposed rule is designed to minimize the need for rule waivers.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it is designed to enhance DTC's rules regarding DTC's rights and the actions it may take with respect to a wind-down of a participant that presents risk to DTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact or 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 relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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-DTC–2006–07 on the subject line.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The text of DTC's proposed Rule 32 can be found DTC's Web site at *http://www.dtc.org.*

[3] Similar proposed rule changes have been filed by the Fixed Income Clearing Corporation [File No. SR–FICC–2006–05] and the National Securities Clearing Corporation [File No. SR–NSCC–2006–05].

[4] The Commission has modified parts of these statements.

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-DTC–2006–07. 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 DTC and on DTC's Web site at *http://www.dtc.org.* 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-DTC–2006–07 and should be submitted on or before January 10, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21683 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54929; File No. SR–FICC–2006–05]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Wind-Down of a Participant

December 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 28, 2006, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on September 28, 2006, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by FICC. 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 add a new Rule 21A, Wind-Down of a Netting Member, to the Rules of FICC's Government Securities Division (''GSD'') and a new Rule 2A, Wind-Down of a Participant, to the Rules of FICC's Mortgage-Backed Securities Division (''MBSD'')[2] to address a situation where a participant notifies FICC that it intends to wind down its activities and FICC determines, in its discretion, that it must take special action in order to protect itself and its participants.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] The text of FICC's GSD's proposed Rule 21A and MBSD's Rule 2A can be found on FICC's Web site at *http://www.ficc.com.*

[3] Similar proposed rule changes have been filed by The Depository Trust Company [File No. SR–DTC–2006–07] and the National Securities Clearing Corporation [File No. SR–NSCC–2006–05].

[4] The Commission has modified parts of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule would allow FICC to determine that a participant is a wind-down member or wind-down participant and would set forth the conditions FICC using its discretion could place on a wind-down participant and the actions FICC using its discretion could take with respect to a wind-down participant to protect itself and its members or participants. Such actions would include restricting or modifying the wind-down member or participant's use of any or all of FICC's services and requiring the wind-down member or participant to post increased clearing fund deposits. FICC would retain all of its other rights set forth in its rules and participant agreements, including the right to declare the wind-down participant insolvent, if applicable, and to cease to act for the participant.

FICC believes that the proposed rule would ensure that it has the needed flexibility to appropriately manage the risks presented by an entity in crisis that remains a participant of FICC. This is particularly important to preserve orderly settlement in the marketplace and to minimize the risk of loss to FICC and its members and participants. The proposed rule summarizes in a single rule FICC's rights and the actions it may take in such a situation. These rights and actions are either permitted elsewhere in FICC's rules or are permitted pursuant to FICC's emergency authority. By summarizing them in a single rule, however, the proposed rule change is designed to provide clarity and a clear legal basis for FICC's rights or actions taken with respect to a wind-down member or participant. FICC also believes that the proposed rule is designed to minimize the need for rule waivers.

FICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will enhance the rules of both divisions of FICC regarding actions that FICC may take with respect to a wind-down of a participant that presents risk to FICC.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact or 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 relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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–FICC–2006–05 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–FICC–2006–05. 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 FICC and on FICC's Web site at *http://www.ficc.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–FICC–2006–05 and should be submitted on or before January 10, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21707 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54923; File No. SR–ISE–2006–73]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change Relating to the Definition of Complex Trade as Applied to Trades Through the Intermarket Linkage

December 12, 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 December 4, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend ISE Rule 1900 to revise the definition of ''Complex Trade'' as such definition applies to trades through the Intermarket Linkage (''Linkage''). The text of the proposed rule change appears below, with additions *italicized* and deletions in [brackets]:

Rule 1900. Definitions

* * * * *

(3) ''Complex Trade'' means the execution of an order in an option series in conjunction with the execution of one or more related order(s) in different options series in the same underlying security occurring at or near the same time *for the purpose of executing a particular investment strategy and for an equivalent number of contracts, provided that the number of contracts of the legs of a spread, straddle, or combination order may differ by a permissible ratio* [for the equivalent number of contracts and for the purpose of executing a particular investment strategy]. *The permissible ratio for this purpose is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00).*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will amend the definition of ''Complex Trade'' in the ISE's Linkage rules. For Linkage purposes, the ISE defines a ''Complex Trade'' as a trade reflecting the execution of an order in an options series in conjunction with one or more other orders in different series in the same underlying security ''for the equivalent number of contracts.'' A

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Complex Trade is exempt from the trade-through rule.[3]

In contrast to the Linkage definition of ''Complex Trade,'' ISE Rule 722(a)(6) defines ''complex orders'' for other purposes on the ISE. This definition includes ''ratio orders,'' which do not require that there be an equivalent number of contracts in the orders. Specifically, ISE Rule 722(a)(6) permits ratios that are equal to or greater than one-to-three, and less than or equal to three-to-one. The ISE applies modified priority rules to complex orders.

The proposal will conform the Linkage definition of Complex Trade to the ISE's general definition of the concept. According to the ISE, the other five options exchanges are adopting a similar definition, which will result in uniform application of the term across all options exchanges. The ISE believes that such uniformity will facilitate the speedy execution of complex trades on all markets.

2. Statutory Basis

According to the ISE, the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) of the Act[4] that the rules of a national securities exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any written comments from members or other interested parties.

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 such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml);* or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2006–73 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–ISE–2006–73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2006–73 and should be submitted on or before January 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21653 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* ISE Rule 1902(b)(7).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54930; File No. SR–MSRB–2006–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Amendments to Rule G–27, on Supervision, Rule G–8, on Recordkeeping, and Rule G–9, on Record Retention

December 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 24, 2006, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule G–27, on supervision, and the related recordkeeping and record retention requirements of Rules G–8 and G–9. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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

Over the past two years, NASD and the New York Stock Exchange (''NYSE'') have adopted a series of rule changes designed to strengthen the supervisory control procedures of their member firms. Specifically, NASD amended its Rule 3010 (Supervision) to include more stringent office inspection rules, and adopted new Rule 3012 (Supervisory Control System) to require the testing and verification of a firm's supervisory procedures.[3]

MSRB Rule G–27, on supervision, requires brokers, dealers and municipal securities dealers (collectively referred to as ''dealers'') to supervise their municipal securities activities by designating individuals with supervisory responsibilities for municipal securities activities, adopting written supervisory procedures, and reviewing transactions and correspondence. Similarly, NASD Rule 3010 requires dealers to establish a supervisory system, adopt written supervisory procedures, review transactions and correspondence, and, most recently, to conduct internal inspections with minimum inspection cycles. NASD also recently adopted new Rule 3012 to require that dealers: (1) Test and verify that its supervisory procedures are sufficient, and amend or create additional supervisory procedures where the testing and verification identify a need; and (2) establish procedures that are reasonably designed to review and supervise, on a day-to-day basis, the customer account activity conducted by the dealer's producing managers.

In April 2006, the MSRB published for comment draft amendments to Rule G–27, which incorporated most of the NASD requirements contained in Rules 3010 and 3012 in order to promote regulatory consistency and make these requirements specifically applicable to the municipal securities activities of securities firms and bank dealers.[4] The Board received two comment letters in response to the notice, both of which expressed support for the draft amendments, as more fully described below.[5] Based on the comment letters received, as well as discussions with various industry participants and the relevant regulatory agencies, the Board determined to adopt the draft amendments with one substantive revision relating to the designation of appropriate principal. Although the new supervisory activities required under the proposed rule change are derived from NASD requirements, these activities relate specifically to a dealer's municipal securities activities and require in-depth knowledge of MSRB rules. Therefore, the Board believes it is appropriate that these supervisory activities be undertaken by a municipal securities principal (or a municipal fund securities limited principal in the case of activities related to municipal fund securities). The proposed rule change clarifies these requirements by amending the ''Appropriate Principal'' provision in Rule G–27(b)(ii)(C).[6]

The MSRB believes that adopting most of the requirements of NASD Rules 3010 and 3012 will help ensure a coordinated regulatory approach in the area of supervision, and will facilitate inspection and enforcement.[7] The proposed amendments to Rule G–27 are described below.

Description of Proposed Amendments

The proposed amendments modify section (b) of Rule G–27, on supervisory system; add new subsection (c)(ii), on tape recording of conversations; add new subsection (c)(iii) on updating written supervisory procedures; add new section (d), on internal inspections; add new section (f), on supervisory control system; and add new definitions section (g). As a general principle, the requirements of Rule G–27 apply only with respect to those registered persons who engage in municipal securities activities and those offices in which such municipal securities activities are undertaken (regardless of the level or amount of such municipal securities activities).

Supervisory System

The proposed amendments modify section (b) of Rule G–27, on supervisory system, to include the following five provisions:[8]

- Designation of certain locations as offices of supervisory jurisdiction (''OSJ'') (G–27(b)(iii));
- Designation of one or more appropriately registered principals in each OSJ, including the main office, and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the dealer (G–27(b)(iv));
- Assignment of each registered person to an appropriately registered representative or principal who shall be responsible for supervising that person's activities (G–27(b)(v));
- Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities (G–27(b)(vi)); and
- Participation of each registered representative and principal in an annual meeting to discuss compliance matters (G–27(b)(vii)).

The amendments also include a reference in Rule G–27(b)(ii)(C) to ''municipal fund securities limited principal'' that is added to explicitly affirm the supervisory functions that such a principal may undertake pursuant to Rule G–3, on professional qualifications. Specifically, paragraph (b)(iv)(C) of Rule G–3 allows a municipal fund securities limited

[3] The NASD and NYSE amendments are substantially similar.

[4] MSRB Notice 2006–11 (April 21, 2006).

[5] Although the notice specifically requested comment from bank dealers, particularly on their ability to comply with the new requirements relating to tape recording of conversations, office inspection, and the new supervisory control provisions, the Board did not receive comment letters from bank dealers. Based on the absence of comment letters from this segment of the industry, as well as informal discussions with the bank regulatory agencies, the Board has no reason to believe that bank dealers will be unable to comply with the new requirements for supervision.

[6] This provision is also amended to make clear that supervision with respect to correspondence under Rule G–27(e) is to be undertaken by a municipal securities principal (or a municipal fund securities limited principal in the case of correspondence relating to municipal fund securities) or a municipal securities sales principal.

[7] The MSRB notes that NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) requires NASD member firms to designate a principal to serve as chief compliance officer and to certify, on an annual basis, that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations. This requirement became fully operative on April 1, 2006. Since all NASD member firms are subject to this rule (which requires that firms have supervisory procedures for compliance with MSRB rules), the Board has not incorporated this requirement into amended Rule G–27. Bank dealers, however, are not currently subject to this requirement since they are not NASD members. Therefore, after the Rule G–27 amendments have been in effect for approximately a year, the Board will seek feedback from the bank regulators concerning bank dealers' ability to comply with the new supervisory requirements over that time period. Assuming there are no compliance problems or concerns in this area, the Board will then consider the propriety of adopting an annual certification requirement for bank dealers.

[8] These provisions are based on NASD Rule 3010(a)(3)–(7).

principal to ''undertake all actions required or permitted under any Board rule to be taken by a municipal securities principal, but solely with respect to activities related to municipal fund securities.''

Tape Recording of Conversations

The amendments incorporate NASD Rule 3010(b)(2), on tape recording of conversations, in Rule G–27(c)(ii). Subsection (c)(ii) requires dealers to establish special supervisory procedures, including the tape recording of conversations, when they have hired more than a specified percentage of registered persons from certain firms that have been expelled or have had their broker/dealer registrations revoked for violations of sales practice rules. The requisite percentage varies depending on the size of the dealer, from 40 percent for a small dealer to 20 percent for a larger dealer. The dealer must establish the required supervisory procedures within 30 days of receiving notice from their registered securities association or bank regulator, or obtaining actual knowledge that it is subject to this provision of the rule.

Under this provision, if the requisite percentage of a dealer's sales force previously was employed by a disciplined firm, the dealer will be required to adopt special written procedures to supervise the telemarketing activities of all its registered persons. The procedures require, at a minimum, that the dealer tape record all telephone conversations between all of its registered persons and both existing and potential customers for a period of two years. The measures required by this provision are designed to prevent a recurrence of sales practice abuse or other customer harm that caused the disciplined firm to have its registration revoked.

This provision also requires dealers subject to the taping requirement to establish reasonable procedures for reviewing tape recordings to ensure compliance with securities laws and applicable rules and regulations, to retain and catalog the tapes, and to submit reports to the appropriate registered securities association or bank regulator on their supervision of telemarketing.

Updating Written Supervisory Procedures

Subsection (c)(iii) is added to replace existing section (e), which currently requires a dealer to revise and update its written supervisory procedures as necessary to respond to changes in Board or other applicable rules. Proposed subsection (c)(iii) has language that mirrors the language in NASD Rule 3010(b)(4), and requires each dealer to keep a copy of procedures at each location where supervisory activities are conducted and to amend its written supervisory procedures within a reasonable time after changes occur.

Internal Inspections

The amendments incorporate NASD Rule 3010(c), on internal inspections, in new section (d) under Rule G–27. This new section imposes office inspection requirements that establish minimum inspection cycles and delineate the topics that must be covered during such inspections as well as the manner in which inspections are documented.[9] In addition, the amendments include new section (g) which defines the designations ''office of supervisory jurisdiction'' and ''branch office'' used in section (d), among other terms.

Mandatory Inspection Cycles. Section (d) obligates dealers to inspect OSJs and supervisory branch offices on at least an annual basis.[10] It also requires dealers to inspect all non-supervisory branch offices at least once every three years. It directs dealers, however, to consider when it might be appropriate to conduct more frequent inspection of non-supervisory branch offices. Further, Rule G–27(d) requires dealers to inspect non-branch locations ''on a regular periodic schedule.'' Each dealer must document, as part of its written supervisory procedures, an explanation of how the dealer determined the frequency of its examination schedule. In establishing the schedule, dealers should consider the nature and complexity of the securities activities for which each non-branch location is responsible, and the frequency of customer contact at the non-branch location.

Independent Office Inspections. Section (d) places limits on who is eligible to perform the required inspection function. This provision prohibits office inspections from being performed by:

- The branch office manager;
- Any person within the office who has supervisory responsibilities; or
- Any individual who is directly or indirectly supervised by such person(s).

However, an exception to this limitation is provided if the dealer is so limited in size and resources that it cannot comply with it.

Content of Inspections and Requirements for Inspection Reports. Dealers must document each office inspection by preparing a written report that documents when it conducted the inspection and the results of its testing and verification in the following areas:

- Safeguarding customer funds and securities;
- Maintaining books and records;
- Supervising customer accounts services by branch office managers;
- Transmitting funds between customer and registered representative and between customers and third parties;
- Validating customer address changes; *and*
- Validating changes in customer account information.

Heightened Inspection Requirements. Section (d) also requires dealers to adopt, under certain circumstances, procedures that require heightened inspections designed to avoid conflicts of interest arising from economic, commercial or financial interests that the branch manager's supervisor holds in the person or activities being inspected. Such heightened inspection procedures are required if (1) the person conducting the inspection reports to the branch office manager's supervisor or works in an office supervised by the branch manager's supervisor; *and* (2) the branch office manager generates 20% or more of the revenue of the business units supervised by the branch office manager's supervisor.[11] Dealers must calculate the 20% threshold in the same manner as when determining whether a producing manager must be subject to heightened supervision, as described below.

Supervisory Control System

The amendments also include new section (f), derived from NASD Rule 3012, which incorporates the following new requirements:

Testing and Verification of Supervisory Control Procedures. Section

[9] The stringency of the office inspection requirements is graduated and based on designations of offices under specifically defined categories, such as office of supervisory jurisdiction, supervisory and non-supervisory branch offices, and non-branch offices.

[10] A ''branch office'' is defined in Rule G–27(g) as ''any location where one or more associated persons of a dealer regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding [certain enumerated locations].'' A ''supervisory branch office'' is any non-OSJ branch office that is responsible for supervising one or more non-branch offices.

[11] The 2004 NTM provides examples of such heightened inspection procedures under NASD Rule 3010, including, without limitation, unannounced office inspections; increasing the frequency of inspections; broadening the scope of activities inspected; and/or having one or more principals review or approve the inspection. The MSRB would view these examples as equally applicable to the heightened inspection procedures required under Rule G–27(d)(iii).

(f) requires dealers to designate and identify one or more principals charged with establishing, maintaining and enforcing a system of ''supervisory control policies and procedures'' that:

• Test and verify that a dealer's supervisory procedures are reasonably designed to achieve compliance with the federal securities laws and MSRB rules; and

• Create additional or amended supervisory procedures where a need for such procedures is identified by such testing.

Annual Submission of Report to Senior Management. At least once annually, the principal(s) designated under section (f) must submit a report to senior management that details the dealer's supervisory control policies and procedures, summarizes the results of testing and identifies significant weaknesses, and discusses additional or amended procedures implemented in response to such testing.

The Board recognizes that situations may arise where a dealer is required under the rules of another self-regulatory organization to produce a similar report. The Board does not intend for a dealer to produce duplicative reports in such situations. Instead, for purposes of this section (f), a dealer may prepare a single report so long as there is coordination in the preparation and submission of such report between any principal(s) designated by the dealer pursuant to the rules of another self-regulatory organization and the principal designated under Rule G–27(b)(ii)(C) or (f)(i). The dealer should adequately document such coordination between or among the various principals.

Supervision of Producing Manager's Customer Account Activity. Section (f) requires dealers to adopt procedures to review and supervise daily customer account activities of each branch office manager, sales manager, regional or district sales manager, or any person performing similar supervisory functions (''producing managers''). These policies and procedures must include ''a means of customer confirmation, notification, or follow-up that can be documented.'' Specifically, the provision requires that policies and procedures must be reasonably designed to review and monitor the following activities:

• All transmittals of funds and securities to and from customer accounts;

• Changes of customer's address, including procedures to validate change of address; and

• Changes in customer investment objectives, including validation of such changes.[12]

Independent Review of Producing Manager. Section (f) requires an independent review of the producing manager. This review must be conducted by a person or persons who are senior to, or ''otherwise independent'' of, the producing manager. To be considered ''otherwise independent'' of the producing manager, the person performing the review:

• Must not report, either directly or indirectly, to the producing manager he or she is reviewing;

• Must be located at a different office than the producing manager;

• Must not have supervisory authority over any of the activity under review, including not being *directly* compensated in whole or in part as a result of such activity; *and*

• Must alternate such review responsibility with another person at least once every two years.

Section (f) also requires dealers to adopt, under certain circumstances, heightened supervisory procedures designed to avoid conflicts of interest arising from economic, commercial or financial interests that the supervisor holds in the person or activities being supervised. Such heightened supervisory procedures are required with respect to producing managers who are responsible for generating at least 20% of the revenue of the business which is supervised by the producing manager's supervisor.[13] As noted above, the relevant provisions of Rule G–27 would apply if any portion of the 20% threshold is attributable to revenue generated through municipal securities transactions. However, the heightened supervision requirement does not apply where an otherwise independent person conducts the producing manager's reviews.

Finally, section (f) provides an exception from the independent review requirement if a dealer is so limited in size and resources that it is unable to identify anyone who is senior to or otherwise independent of the producing manager to conduct the review (the ''limited size and resource'' exception).

* * * * *

The MSRB intends generally that the provisions of Rule G–27 be read consistently with the analogous NASD provisions, unless the MSRB specifically indicates otherwise. Thus, relevant NASD interpretations would be presumed to apply to the comparable MSRB provision, subject to the MSRB's right to make distinctions when necessary and appropriate. The MSRB recommends that dealers, including bank dealers, regularly visit or link to the relevant portions of the NASD Web site on supervision for current NASD interpretations of such analogous provisions.[14] Furthermore, the MSRB intends to continue coordinating its requirements relating to supervision with those of the other relevant self-regulatory organizations in the securities markets whenever appropriate for dealers engaging in municipal securities transactions.

Finally, NASD Rule 3012 (Supervisory Control System) provides that ''Any member in compliance with substantially similar requirements of the New York Stock Exchange, Inc. shall be deemed to be in compliance with the provisions of this Rule.'' We note that the amendments to Rule G–27 incorporate substantially all of NASD Rule 3012. Therefore, the MSRB believes that any dealer in compliance with similar NASD or NYSE requirements would be deemed in compliance with the comparable requirements of Rule G–27(f), on supervisory control system, so long as there is coordination between or among any principal(s) designated by the dealer pursuant to the rules of NASD or the NYSE and the appropriate principal designated pursuant to Rule G–27(b)(ii)(C).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[15] which provides that the MSRB's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect

[12] If a dealer does not engage in any of these activities, then the dealer's supervisory control policies and procedures must note that the dealer is not engaged in these activities and that the supervisory control policies and procedures must be amended before the dealer may engage in such activities.

[13] The 2004 NTM provides examples of such heightened supervisory procedures under NASD Rule 3012, including, without limitation, unannounced supervisory reviews; increasing the frequency of supervisory reviews by different reviewers within a certain time period; broadening the scope of activities reviewed; and/or having one or more principals approve the supervisory review of such producing manager. The MSRB would view these examples as equally applicable to the heightened supervisory procedures required under Rule G–27(f)(ii)(C).

[14] NASD's Web site on supervision is located at *http://www.nasd.com/RulesRegulation/IssueCenter/SupervisoryControl/index.htm.*

[15] 15 U.S.C. 78o–4(b)(2)(C).

to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that by conforming Rule G–27 to the relevant NASD rules on supervision and thereby making such requirements specifically applicable to the municipal securities activities of securities firms and bank dealers, the proposed rule change will promote regulatory consistency by facilitating dealer compliance with such requirements, as well as by facilitating the inspection and enforcement thereof.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In April 2006 the MSRB published for comment draft amendments to Rule G–27 which incorporated most of the NASD requirements contained in Rules 3010 and 3012 in order to promote regulatory consistency and make these requirements specifically applicable to the municipal securities activities of securities firms and bank dealers. In response to its notice, the Board received two comment letters, both of which expressed support for the draft amendments. The Investment Company Institute (''ICI'') noted that conforming MSRB requirements to those of the NASD ''will strengthen the current supervisory systems of municipal securities dealers because NASD rules require a more structured and formalized supervisory system than Rule G–27 in its current form.'' ICI further stated that the proposal will ''facilitate compliance by those dealers that are dually registered with the MSRB and the NASD * * * [and that this] conformity should also enable the NASD to more efficiently inspect those dealers that are subject to rules of both self-regulatory organizations.''

The other commentator—BSC Securities—was supportive of the draft amendments but was concerned about ''unintended consequences of rulemaking.'' BSC noted that, as a small firm, it is particularly concerned with costs of compliance and therefore urged the Board to adopt provisions that are ''identical (not 'substantially similar') to other SRO's rules to ensure the coordination of regulatory approaches.'' While the Board is sensitive to the costs of compliance, particularly in the case of smaller dealers, we believe that the amendments are appropriate and will result, as ICI stated, in ''no substantive difference in the supervisory systems imposed by the rules of the MSRB and the NASD.''

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has proposed that the amendments become effective six months after Commission approval of the proposed rule change.

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–MSRB–2006–10 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–MSRB–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 Room. Copies of such filing also will be available for inspection and copying at the MSRB's offices. 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–MSRB–2006–10 and should be submitted on or before January 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21779 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54933; File No. SR–NASDAQ–2006–051]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Temporarily Adjust Tier Volume Limits

December 13, 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 December 1, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. On December 7, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the

[16] 17 CFR 200.30–3(a)(12).

[1] 5 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to reduce, for the month of December 2006, the average daily volume tiers in Nasdaq-listed securities contained in Nasdaq Rule 7018(a) to qualify for certain fee and rebate levels. Nasdaq would implement the proposed rule change immediately. The text of the proposed rule change is available on Nasdaq's Web site at *http://www.nasdaq.com*, at the principal office of Nasdaq, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to reduce, for the month of December 2006, the average daily volume tiers for trading and routing in Nasdaq-listed securities contained in Nasdaq Rule 7018(a) to qualify for certain fee and rebate levels. Currently, in order to qualify for a per-share execution fee of $0.0028, members must have an average daily volume through Nasdaq facilities in all securities during a particular month of (i) more than 30 million shares of liquidity provided and (ii) more than 50 million shares of liquidity accessed and/or routed. For routed orders, to qualify for a fee of the greater of (i) $0.0028 per share executed or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than $0.003 per share executed, a firm must have an average daily volume through Nasdaq facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity access and/or routed. For the month of December 2006, Nasdaq is proposing to reduce those qualification volume tiers to 27 million shares and 47 million shares, respectively. In addition, Nasdaq is also reducing for the month of December 2006 the monthly average daily volume tier required to obtain the $0.0025 credit rebate from its current 30 million share level to 27 million shares.[5]

Nasdaq states that the reduction is designed to respond to certain processing issues associated with Nasdaq's implementation of its new single-book execution facility that can result in inhibiting the ability of users to submit orders to the system and thus not reach their usual levels of participation that would historically entitle them to the most competitive fee and rebate levels. Nasdaq believes that a temporary reduction of the qualification tiers is appropriate while both Nasdaq and its users gain more familiarity with the new single-book trading environment.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(4) of the Act,[7] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

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–NASDAQ–2006–051 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–NASDAQ–2006–051. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be

[5] In addition, Nasdaq is also making certain non-substantive and corrective changes to Nasdaq Rule 7018(a) to reflect, among other things, the recent termination of the operation of Nasdaq's Brut Facility.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on December 7, 2006, the date on which the Exchange submitted Amendment No. 1.

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–2006–051 and should be submitted on or before January 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21652 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54932; File No. SR–NASD–2006–132]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASD Members Using ITS/CAES and Inet

December 13, 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 December 1, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for NASD members using the ITS/CAES System and Nasdaq's Inet facility (collectively, the ''Nasdaq Facilities''). Nasdaq states that it will implement this rule change on December 1, 2006. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].[5]

7010. System Services

(a)–(h) No change.

(i) ITS/CAES System and Inet Order Execution and Routing

(1)–(6) No change.

(7) The following charges shall apply to the use of the Nasdaq Facilities by members for routing to the NYSE for all securities[, including Exchange-Traded Funds]:

[Order charged a fee by the NYSE specialist]	[$0.01 per share executed]
Order that attempts to execute in the Nasdaq Facilities prior to routing*:* [and that is not charged a fee by the NYSE specialist or that is routed to NYSE via ITS].	[$0.0002 per share executed (but no more than $25,000 per month)]
Order for Exchange-Traded Fund	*$0.0028 per share executed*
All other orders	*$0.000225 per share executed*
Order that does not attempt to execute in the Nasdaq Facilities prior to routing*:* [and that is not charged a fee by the NYSE specialist].	[$0.0003 per share executed (but no more than $75,000 per month)]
Order for Exchange-Traded Fund	*$0.003 per share executed*
All other orders	*$0.000275 per share executed*

(8) No change.

(j)—(y) 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is modifying its price schedule for routing orders to the New York Stock Exchange LLC (''NYSE'') in response to significant pricing changes that were filed and announced by NYSE on November 30, 2006 and implemented by it on December 1, 2006.[6] Specifically, the NYSE filings establish an increased execution fee of $0.000275 per share executed for securities other than exchange-traded funds and a fee of $0.003 per share executed for most orders for exchange-traded funds, eliminate a $750,000 monthly fee cap, and eliminate specialist commissions on transactions.

To ensure that its fees for routing orders to the NYSE accurately reflect the costs that Nasdaq will incur and provide appropriate incentives for Nasdaq market participants to seek liquidity on Nasdaq rather than routing directly to NYSE, Nasdaq is instituting the following fees:

- $0.003 per share executed for exchange-traded fund orders that route

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Nasdaq states that changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com,* as further amended on an immediately effective basis by File No. SR–NASD–2006–130 (filed on November 30, 2006).

[6] *See* Securities Exchange Act Release Nos. 54856 (December 1, 2006) (notice of filing and immediate effectiveness of File No. SR–NYSE–2006–106 to increase transaction execution fees and eliminate fee cap) and 54850 (November 30, 2006) (notice of filing and immediate effectiveness of File No. SR–NYSE–2006–105 to eliminate specialist fees).

to NYSE without attempting to execute in the Nasdaq Facilities;

• $0.0028 per share executed for exchange-traded fund orders that route to NYSE after attempting to execute in the Nasdaq Facilities;

• $0.000275 per share executed for orders in securities other than exchange-traded funds that route to NYSE without attempting to execute in the Nasdaq Facilities; and

• $0.000225 per share executed for orders in securities other than exchange-traded funds that route to NYSE after attempting to execute in the Nasdaq Facilities.

As a further corollary to the changes made by NYSE, Nasdaq is eliminating the monthly fee caps that it had in place for orders routed to NYSE and eliminating the fee for orders charged a fee by the NYSE specialist.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq states that the proposed rule change is a direct response to changes in the fees that Nasdaq pays when routing orders to the NYSE for execution.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder[10] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2006–132 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASD–2006–132. 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 will also be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASD–2006–132 and should be submitted on or before January 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21648 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54934; File No. SR–NASD–2006–130]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Extend a Pricing Pilot for NASD Members Using ITS/CAES and Inet

December 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. On December 6, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend a pricing pilot for NASD members using the ITS/CAES System and Nasdaq's Inet facility (collectively, the ''Nasdaq Facilities''). Nasdaq states that it will implement this rule change on December 1, 2006. The text of the proposed rule change is set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].[5]

7010. System Services

(a)–(h) No change.

(i) ITS/CAES System and Inet Order Execution and Routing

(1)–(5) No change.

(6) Except as provided in paragraph (7), the following charges shall apply to the use of the order execution and routing services of the Nasdaq Facilities by members for securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans other than Exchange-Traded Funds (''Covered Securities''):

ORDER EXECUTION

Order that accesses the Quote/Order of a Nasdaq Facility market participant:	
Charge to member entering order:	
On or after [December 1, 2006]*January 2, 2007*	$0.0007 per share executed.
For a pilot period during the month*s* of November *and December* 2006:	
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of (i) more than 100,000 shares of liquidity provided, and (ii) more than 100,000 shares of liquidity accessed and/or routed.	$0.0007 per share executed.
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of (i) between 50,000 and 100,000 shares of liquidity provided, and (ii) between 50,000 and 100,000 shares of liquidity accessed and/or routed.	$0.001 per share executed.
Other members	$0.0015 per share executed.
Credit to member providing liquidity for a Covered Security listed on NYSE and The NASDAQ Stock Market LLC.	$0.0007 per share executed.
Credit to a member providing liquidity for other Covered Securities:	
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of more than 5 million shares of liquidity accessed, provided, or routed.	$0.0005 per share executed.
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of 10 million or more shares of liquidity provided.	$0.0006 per share executed.
Other members	No credit.

ORDER ROUTING

Order routed to Amex	$0.0028 per share executed (plus, in the case of orders charged a fee by the Amex specialist, $0.01 per share executed).
Order routed to NYSE	See NYSE fee schedule in Rule 7010(i)(7).
All other orders	$0.0028 per share executed.

(7)—(8) No change.

(j)—(y) 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to extend for one month a pricing pilot for non-Nasdaq listed securities traded through the Nasdaq Facilities. Effective November 1, 2006,[6] Nasdaq introduced a higher pricing tier of $0.0015 per share executed for members to access liquidity when those members provide an average of less than 50,000 shares of liquidity per day and access and/or route an average of less than 50,000 shares of liquidity per day in non-Nasdaq securities through the Nasdaq Facilities during the month. In addition, Nasdaq introduced an intermediate pricing tier of $0.001 per share executed for members to access liquidity when those members provide an average of between 50,000 shares and 100,000 shares of liquidity per day and access and/or route an average of between 50,000 shares and 100,000 shares of liquidity per day.[7] Nasdaq states that it is continuing to evaluate the effect of the pricing change on market participants' liquidity provision, and therefore is extending the pilot pricing for one month. Nasdaq states that it will determine whether to submit an additional filing regarding these fees by January 2, 2006.

[5] Nasdaq states that changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com*, as amended by SR–NASD–2006–126 (November 13, 2006) on an immediately effective basis.

[6] *See* Securities Exchange Act Release No. 54742 (November 13, 2006), 71 FR 67179 (November 20, 2006) (SR–NASD–2006–122).

[7] Nasdaq continues to charge $0.0007 per share executed for all other members to access liquidity (*i.e.*, when those members provide an average of more than 100,000 shares of liquidity per day and access and/or route an average of more than 100,000 shares of liquidity per day).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq states that the proposed rule change extends for an additional month a pilot that introduced a higher fee for accessing Nasdaq Facility liquidity in cases where a market participant's use of the Nasdaq Facilities does not meet certain minimal thresholds. Nasdaq believes that this change is consistent with an equitable allocation of fees because lower overall fees are charged to market participants that enhance market quality by providing liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, for the reasons discussed in SR–NASD–2006–122, Nasdaq does not believe that the proposed change to fees to access liquidity in non-Nasdaq securities through the Nasdaq Facilities will impose a burden on competition by other markets that route orders to the Nasdaq Facilities for execution.

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

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 thereunder [11] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2006–130 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASD–2006–130. 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 will also be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASD–2006–130 and should be submitted on or before January 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21650 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on December 6, 2006, the date on which the Exchange submitted Amendment No. 1.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54931; File No. SR–NASD–2006–115]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, as Amended, Relating to an NASD Trade Reporting Facility Established in Conjunction With the Boston Stock Exchange

December 13, 2006.

I. Introduction

On September 29, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to establish an NASD trade reporting facility (the ''NASD/BSE TRF'') in conjunction with the Boston Stock Exchange, Inc. (''BSE''). The proposed rule change was published for comment in the **Federal Register** on October 18, 2006.[3] The Commission received one comment letter regarding the proposal.[4] The NASD filed Amendment No. 1 to the proposed rule change on December 5, 2006.[5] This

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54591 (October 12, 2006), 71 FR 61519.

[4] *See* letter from Alden Adkins, Executive Vice President, BSE, to Robert Colby, Deputy Director, Division of Market Regulation, Commission, dated October 24, 2006 (''BSE Letter'').

[5] In Amendment No. 1, the NASD revises the proposal to: (1) Provide notice of final action taken by the NASD with respect to the proposal; (2) amend NASD Rule 4632D(a) to indicate that the NASD/BSE TRF will support the .W and .PRP trade report modifiers; (3) add NASD Rule 4632D(g)(2)(G) to define the term ''cancelled'' for purposes of determining the deadline for reporting a trade cancellation; (4) add NASD Rule 4632D(i) and 6130D(g) to expressly prohibit the aggregating of trades for purposes of trade reporting to the NASD/BSE TRF; (5) add NASD Rule 6130D(f) to provide trade report modifiers for certain transactions reported to the NASD/BSE TRF in accordance with Section 3 of Schedule A to the NASD By-Laws; and

Continued

order approves the proposal, as amended, on an accelerated basis. In addition, the Commission is publishing notice to solicit comments on the proposed rule change as amended by Amendment No. 1.

II. Description of the Proposal

A. NASD/BSE TRF

The NASD proposes to establish a new trade reporting facility, the NASD/BSE TRF, that will provide NASD members with an additional facility for reporting transactions in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act,[6] that are effected otherwise than on an exchange. The NASD/BSE TRF will be operated by the NASD/BSE Trade Reporting Facility LLC (''NASD/BSE TRF LLC''). The NASD/BSE TRF structure and rules are substantially similar to the trade reporting facilities established by the NASD and the Nasdaq Stock Market, Inc. (the ''NASD/Nasdaq TRF'') and by the NASD and the National Stock Exchange, Inc. (the ''NASD/NSX TRF''), which the Commission approved in June 2006[7] and November 2006,[8] respectively.

The NASD/BSE TRF will be a facility, as defined under the Act,[9] of the NASD, subject to regulation by the NASD and to the NASD's registration as a national securities association. NASD members[10] that match and/or execute orders internally or through proprietary systems may submit reports of these trades, with appropriate information and modifiers, to the NASD/BSE TRF, which will then report them to the appropriate exclusive securities information processor (''SIP'').[11] NASD/BSE TRF transaction reports disseminated to the media will include a modifier indicating the source of the transactions that will distinguish them from transactions executed on or through the BSE. The NASD/BSE TRF will provide the NASD with a real-time copy of each trade report for regulatory review purposes. At the option of the participant, the NASD/BSE TRF may provide the necessary clearing information regarding transactions to the National Securities Clearing Corporation.

B. Limited Liability Company Agreement of the NASD/BSE TRF LLC

The NASD and the BSE will jointly own the NASD/BSE TRF LLC, which will operate the NASD/BSE TRF. The NASD has filed the Limited Liability Company Agreement of the NASD/BSE TRF LLC (the ''LLC Agreement'') as part of the current proposal. The LLC Agreement recognizes the NASD as having sole regulatory responsibility for the NASD/BSE TRF. The NASD, as the ''SRO Member'' under the LLC Agreement, will perform the ''SRO Responsibilities''[12] for the NASD/BSE TRF. The BSE, as the ''Business Member'' under the LLC Agreement, will be primarily responsible for the management of the facility's business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of the NASD. The BSE will pay the cost of regulation and provide systems to enable NASD members to report trades to the NASD/BSE TRF. The BSE will be entitled to the profits and losses, if any, derived from the operation of the NASD/BSE TRF.[13] Under section 9(d) of the LLC Agreement, each Member agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission pursuant to its regulatory authority and the provisions of the LLC Agreement.

The NASD/BSE TRF LLC will be managed by, or under the direction of, a Board of Directors to be established by the NASD and the BSE. The NASD will have the right to designate at least one Director, the SRO Member Director, to the NASD/BSE TRF LLC Board of Directors. The SRO Director must approve, by consent, all ''Major Actions,'' as defined in section 10(e) of the LLC Agreement. In addition, each Director agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission and the SRO Member pursuant to their regulatory authority.[14] Further, when discharging her or her duties as a member of the Board of Directors, each Director must take into consideration whether his or her actions as a Director would cause the NASD/BSE TRF or either Member to engage in conduct that would be inconsistent with the purposes of the Act.[15]

The initial term of the LLC Agreement is three years. During that time, until the NASD/BSE TRF reaches ''Substantial Trade Volume'' (defined as 250,000 trades or more per day for three consecutive months), the BSE may terminate the arrangement for convenience. After the NASD/BSE TRF reaches Substantial Trade Volume, either Member may terminate the LLC Agreement by providing to the other Member prior written notice of at least one year. In addition, the NASD may terminate in the event its status or reputation as an SRO is called into jeopardy by the actions of the BSE or the NASD/BSE TRF LLC. If the NASD/BSE TRF LLC arrangement is terminated, the NASD represents that it would be able to fulfill all of its regulatory obligations with respect to over-the-counter (''OTC'') trade reporting through its other facilities, including the NASD/Nasdaq TRF, the ADF, and the ITS/CAES System.

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(6) make various technical changes. In addition, in Amendment No. 1 the NASD makes conforming changes to the rules of the trade reporting facility operated by the NASD and the National Stock Exchange, Inc. (the ''NASD/NSX TRF'') by adding NASD Rules 4632C(h) and 6130C(g) to expressly prohibit the aggregating of trades for purposes of trade reporting to the NASD/NSX TRF.

[6] 17 CFR 242.600(b)(47).

[7] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving File No. SR–NASD–2005–087) (''NASD/Nasdaq TRF Approval Order''). Although the NASD/Nasdaq TRF originally accepted transaction reports only for Nasdaq Global Market and Nasdaq Capital Market securities and convertible bonds listed on the Nasdaq Stock Market LLC (''Nasdaq Exchange''), the Commission recently approved an NASD proposal that, among other things, amended the rules of the NASD/Nasdaq TRF to allow NASD members to report transactions in NMS stocks to the NASD/Nasdaq TRF. *See* Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving File No. SR–NASD–2006–104) (''NASD/Nasdaq TRF November Order'').

[8] *See* Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving File No. SR–NASD–2006–115) (''NASD/NSX TRF Approval Order'').

[9] 15 U.S.C. 78c(a)(2).

[10] Only NASD members in good standing may participate in the NASD/BSE TRF. *See* NASD Rule 6120D(a)(1). NASD/BSE TRF participants also must meet the minimum requirements set forth in NASD Rule 6120D, including the execution of, and continuing compliance with, a Participant Application Agreement; membership in, or maintenance of, an effective clearing arrangement with a participant of a registered clearing agency registered pursuant to the Act; and the acceptance and settlement of each trade that the NASD/BSE TRF identifies as having been effected by the participant. NASD Rule 6190D, ''Termination of Access,'' allows the NASD to terminate access to the NASD/BSE TRF if a participant fails to: (1) abide by the rules or operating procedures of the trade reporting service of the NASD/BSE TRF or the NASD; (2) honor contractual agreements entered into with the NASD or its subsidiaries or the Participant Application Agreement; or (3) pay promptly for services rendered to the trade reporting service of the NASD/BSE TRF.

[11] The NASD/BSE TRF will have controls in place to ensure that transactions reported to the NASD/BSE TRF that are significantly away from the current market will not be submitted to the SIP. The NASD represents that this is consistent with current practice and notes that the Alternative Display Facility (''ADF'') and the NASD/Nasdaq TRF currently do not submit such trades to the SIP.

[12] The LLC Agreement defines ''SRO Responsibilities'' as those duties or responsibilities of a self-regulatory organization (''SRO'') pursuant to the Act and the rules promulgated thereunder, including but not limited to those set out in section 9(a) of the LLC Agreement. *See* Schedule A of the LLC Agreement.

[13] *See* section 15 of the LLC Agreement.

[14] *See* section 10(b) of the LLC Agreement.

[15] *Id.*

C. NASD/BSE TRF Rules

1. NASD Rule 4000D and 6000D Series

The NASD proposes to adopt the NASD Rule 4000D Series, ''The NASD/BSE Trade Reporting Facility,'' and 6000D Series, ''NASD/BSE Trade Reporting Facility Systems and Programs,'' to establish, respectively, trade reporting and clearing and comparison rules for the NASD/BSE TRF.[16] The NASD Rule 4000D and 6000D Series are substantially similar to the NASD Rule 4000 and 6000 Series governing the NASD/Nasdaq TRF and the NASD Rule 4000C and 6000C Series governing the NASD/NSX TRF.[17]

D. Amendment No. 1

Amendment No. 1 makes several changes to the proposal. In the original proposal, proposed NASD Rule 4632D(a)(7) indicated that stop stock transactions, transactions at prices based on average-weighting or other special formulae, and certain transactions that reflected a price different from the current market could not be reported to the NASD/BSE TRF and had to be reported to the NASD via an alternative electronic mechanism. Amendment No. 1 revises NASD Rule 4362D(a) to indicate that the NASD/BSE TRF will support these trades and thus will support the .W and .PRP trade report modifiers. Specifically, new NASD Rules 4632D(a)(4) and (a)(9) require NASD members to append the .W trade report modifier to, respectively, transaction reports occurring at prices based on average-weighting or other special pricing formulae and to reports of stop stock transactions. New NASD Rule 4362D(a)(7) will require members to append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. New NASD Rules 43632D(a)(4), (7), and (9) are substantially the same as current NASD Rules 4632(a)(4), (7), and (9), which apply to the NASD/Nasdaq TRF.

In addition, Amendment No. 1 adds NASD Rule 6130D(f), which requires the use of specified trade report modifiers for the reporting of certain types of transactions that are assessed a regulatory transaction fee in accordance with section 3 of Schedule A to the NASD By-Laws. Specifically, NASD Rule 6130D(f) provides trade report modifiers for the reporting of odd-lot transactions, away from the market sales, and purchases or sales of securities effected upon the exercise of an over-the-counter option. These transactions are not to be reported to the NASD/BSE TRF for purposes of publication.[18] NASD Rule 6130D(f) is substantially similar to NASD Rule 6130(g), which became effective on December 1, 2006.[19]

Amendment No. 1 also adds NASD Rules 4632D(i) and 6130D(g) to the rules of the NASD/BSE TRF, and makes conforming changes to the rules of the NASD/NSX TRF.[20] These rules add express provisions prohibiting the aggregation of trades for purposes of trade reporting to the NASD/BSE TRF and the NASD/NSX TRF. The NASD notes that the original proposal indicated that members would not be permitted to aggregate individual executions of orders in a security at the same price into a single transaction report submitted to the NASD/BSE TRF. Similarly, the NASD notes that aggregation is not permitted for purposes of trade reporting to the NASD/NSX TRF.[21] For the sake of clarity, and to maintain consistency among the rules governing its trade reporting facilities, the NASD has determined to add an express prohibition on aggregating trades to the rules of both the NASD/BSE TRF and the NASD/NSX TRF.

Finally, Amendment No. 1 contains several technical changes. In this regard, Amendment No. 1 adds NASD Rule 4632D(g)(2)(G) for purposes of determining the deadline for reporting a trade cancellation to the NASD/BSE TRF. This paragraph is identical to NASD Rule 4632(g)(2)(G) of the NASD/Nasdaq TRF rules and was omitted inadvertently from NASD Rule 4632D. Amendment No. 1 also replaces an incorrect reference in NASD Rule 6190D to the ''Applicant Participation Agreement'' with a reference to the ''Participant Application Agreement;'' replaces a reference in NASD Rule 4632D(d)(1) to ''Registered ECNs'' with a reference to ''Reporting ECNs,'' which is the defined term in NASD Rule 6110D; revises NASD Rule 6130D(d)(2) to require trade reports to include the number of shares or bonds; and revises NASD Rule 4632D to clarify a reference to a Non-Reporting Member or other contra party, and to refer to a ''Security Identification Symbol'' rather than a ''stock symbol.''

E. Implementation

In light of the systems changes necessary for the NASD to implement the NASD/BSE TRF for non-Nasdaq exchange-listed securities, the NASD proposes to implement the proposal in two phases. Specifically, the NASD proposes to implement the proposed rule change with respect to Nasdaq-listed equity securities and convertible debt on the first day of operation of the NASD/BSE TRF, and to implement the proposed rule change with respect to non-Nasdaq exchange-listed securities at a later date.

The NASD will announce the implementation of the first phase of the proposed rule change no later than 30 days following Commission approval of the proposal, and the second phase no later than 90 days following Commission approval.

III. Summary of Comments

The Commission received one comment letter regarding the proposal.[22] The commenter argued that the NASD/NSX TRF would have an unfair competitive advantage over the NASD/BSE TRF if the NASD/NSX TRF were approved prior to the NASD/BSE TRF. Specifically, the commenter believes that ''the first regional exchange operated TRF [will] capture the lion's share of members seeking an alternative to the Nasdaq operated TRF.''[23] Citing the Congressional finding in section 11A(a)(1)(C)(ii) of the Act[24] that ''[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * fair competition among brokers and broker-dealers, among exchange markets, and between exchange markets and markets other than exchange markets * * *,'' the commenter asked the Commission to approve the current proposal and the NASD/NSX TRF proposal simultaneously. In support of this argument, the commenter also noted the

[16] The NASD notes that all other NASD rules that apply to OTC trading generally will apply to trades reported to the NASD/BSE TRF.

[17] Some differences among the rules governing the governing the trade reporting facilities result from differences among the trade reporting systems of the facilities. For example, because neither the NASD/BSE TRF or the NASD/NSX TRF has a trade comparison functionality, the rules governing the NASD/BSE TRF and the NASD/NSX TRF contain no provisions relating to trade matching, trade acceptance, or aggregate volume matching. The rules governing the NASD/Nasdaq TRF contain such provisions.

[18] *See* NASD Rule 4632D(f).

[19] *See* Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 43976 (June 16, 2006) (order approving File No. SR–NASD–2006–055). *See also* Securities Exchange Act Release No. 54909 (December 11, 2006) (notice of filing and immediate effectiveness of File No. SR–NASD–2006–129) (proposing a substantially similar rule for the NASD/NSX TRF) (''December Notice'').

[20] *See* NASD Rules 4632C(h) and 6130C(g).

[21] *See* NASD/NSX TRF Approval Order, *supra* note 8.

[22] *See* BSE Letter, *supra* note 4.

[23] *See* BSE Letter, *supra* note 4.

[24] 15 U.S.C. 78k–1(a)(1)(C)(ii).

similarities between the NASD/NSX TRF proposal and the current proposal.

IV. Discussion

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 association.[25] In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 15A(b)(6) of the Act [26] 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 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.

The NASD/BSE TRF will provide NASD members with an additional mechanism for reporting transactions in exchange-listed securities effected otherwise than on an exchange. Rule 601 of Regulation NMS requires the NASD to file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities that are executed by its members otherwise than on a national securities exchange.[27] Under rule 603 of Regulation NMS,[28] national securities exchanges and national securities associations act jointly pursuant to an effective national market system plan to disseminate consolidated information, including a national best bid and offer, and quotations for and transactions in NMS stocks. Today, the NASD operates the ADF,[29] NASD/Nasdaq TRF [30] and the NASD/NSX TRF,[31] and the ITS/CAES System [32] for collecting transaction reports. In addition, the NASD is a participant in the Nasdaq UTP Plan [33] with regard to transaction reports in Nasdaq-listed securities, and the CTA Plan [34] with regard to securities listed on exchanges other than Nasdaq.

Upon approval of the NASD/BSE TRF, the NASD will operate another facility for the purposes of accepting transaction reports from its members. The Commission has previously recognized that the Act does not prohibit the NASD from establishing multiple facilities for fulfilling its regulatory purposes.[35] Indeed, as noted above, the NASD currently operates multiple facilities for fulfilling its regulatory obligations. Therefore, the Commission believes that it is consistent with the Act for the NASD to establish the NASD/BSE TRF for purposes of fulfilling its regulatory obligations. The NASD represented that if the NASD/BSE TRF LLC arrangement is terminated, the NASD will be able to fulfill all of its regulatory obligations with respect to OTC trade reporting through its other facilities, including the NASD/Nasdaq TRF and the ADF.

The NASD represented that it will have an integrated audit trail of all trade reporting facilities, ADF, and ITS/CAES System transactions, and will have integrated surveillance capabilities. NASD has represented that it expects to automate its integrated audit trail and surveillance by the end of the fourth quarter of 2006 for Nasdaq-listed securities and by the end of the first quarter of 2007 for non-Nasdaq exchange-listed securities. The Commission believes that an integrated audit trail and integrated surveillance capabilities are important to the NASD's ability to conduct effective surveillance of OTC trading in exchange-listed securities when transactions in those securities can be reported to one of the NASD's trade reporting facilities, the ADF, or the ITS/CAES System.

A commenter suggested that the Commission approve the current proposal simultaneously with the NASD/NSX TRF.[36] As noted above, the Commission has approved the NASD's proposal to establish the NASD/NSX TRF.[37] The Commission stated in the NASD/NSX TRF Approval Order that it did not believe that it should delay the operation of the NASD/NSX TRF until other trade reporting facilities are ready to operate.[38] The Commission stated, further, that it believed that approving the NASD/NSX TRF and allowing it to begin operations immediately could enhance competition by providing a new facility, in addition to those that are operating currently, for reporting OTC trades in exchange-listed securities.[39]

A. NASD/BSE TRF Rules

Most of the provisions in the new NASD Rule 4000D and 6000D Series, which establish the trade reporting and clearing and comparison rules for the NASD/BSE TRF, are substantially similar to the NASD Rule 4000 and 6000 Series and the NASD Rule 4000C and 6000C Series that the Commission approved for the NASD/Nasdaq TRF [40] and the NASD/NSX TRF,[41] respectively. Other provisions in the rules of the NASD/BSE TRF are substantially similar to existing NASD rules.[42] The Commission finds that the provisions of the NASD Rule 4000D and 6000D Series that are substantially similar to existing NASD rules are consistent with Act.

In Amendment No. 1, the NASD proposes to adopt rules for the NASD/NSX TRF and the NASD/BSE TRF that expressly prohibit members from aggregating trades for purposes of trade

[25] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78o–3(b)(6).

[27] Under Rule 601(b) of Regulation NMS, broker-dealers are prohibited from executing a transaction otherwise than on a national securities exchange unless there is an effective transaction reporting plan. NASD Rule 5000 requires NASD members to report transactions in exchange-listed securities effected otherwise than on an exchange to NASD.

[28] 17 CFR 242.603.

[29] Currently, the ADF only accepts quotes and trades in Nasdaq-listed securities. The Commission recently approved a proposal to extend the ADF to non-Nasdaq exchange-listed securities. *See* Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving File No. SR–NASD–2006–091).

[30] *See* NASD/Nasdaq TRF Approval Order and NASD/Nasdaq TRF November Order, *supra* note 7.

[31] *See* NASD/NSX TRF Approval Order, *supra* note 8.

[32] The ITS/CAES System provides a means by which NASD and its members can comply with the terms of the Intermarket Trading System Plan (''ITS Plan''). The ITS/CAES System reports trades in non-Nasdaq exchange-listed securities that are effected in the ITS/CAES System or in NASD members' proprietary systems. The Commission recently approved an NASD proposal to amend the ITS/CAES System to reflect the operation of the Nasdaq Exchange as a national securities exchange. *See* NASD/Nasdaq TRF November Order, *supra* note 7.

[33] Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP Plan'').

[34] Consolidated Tape Association Plan (''CTA Plan'').

[35] *See* NASD/Nasdaq TRF Approval Order, *supra* note 7.

[36] *See* BSE Letter, *supra* note 4.

[37] *See* NASD/NSX TRF Approval Order, *supra* note 8.

[38] *See* NASD/NSX TRF Approval Order, *supra* note 8.

[39] *See* NASD/NSX TRF Approval Order, *supra* note 8.

[40] *See* NASD/Nasdaq TRF Approval Order, *supra* note 7.

[41] *See* NASD/NSX TRF Approval Order, *supra* note 8.

[42] For example, the two- and three-party trade reporting rules in NASD Rules 4632D(c) and (d) are substantially similar to the two- and three-party trade reporting rules of the ADF. *See* NASD Rules 4632A(c) and (d). Similarly, the provisions of NASD Rule 6130D(f), which provide trade report modifiers for certain transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the NASD By-Laws, are substantially similar to NASD Rule 6130(g), which governs the NASD/Nasdaq TRF. The NASD also adopted substantially similar provisions for the NASD/NSX TRF in NASD Rule 6130C(f). *See* December Notice, *supra* note 19.

reporting to the NASD/NSX TRF and the NASD/BSE TRF.[43] The NASD notes that both its initial NASD/BSE TRF proposal and the NASD/NSX TRF proposal[44] stated this prohibition, which the NASD now proposes to include in the rules of the NASD/NSX TRF and the NASD/BSE TRF. The Commission finds that these provisions are consistent with the Act because they will help to clarify the rules governing the NASD/NSX TRF and the NASD/BSE TRF.

In addition, Amendment No. 1 revises NASD Rules 4632D(a)(4), (7), and (9) to reflect that the NASD/BSE TRF will support the .W and .PRP modifiers, and adds NASD Rule NASD Rule 4632D(g)(2)(G), which is identical to NASD Rule 4632(g)(2)(G), and was inadvertently omitted. Amendment No. 1 also proposes to adopt NASD Rule 6130D(f), which provides trade report modifiers for certain transactions and is substantially similar to NASD Rules 6130(g) and 6130C(f).[45] Because proposed NASD Rule 6130D(f), and the proposed changes to NASD Rule 4632D(a) and NASD Rule 4632D(g), adopt rule provisions for the NASD/BSE TRF that are identical or substantially similar to existing NASD rules, the Commission finds that these changes are consistent with the Act. Similarly, Commission finds that the technical changes described in Section II.D. above, which correct errors in the text of the NASD/BSE TRF's rules, are consistent with the Act because they will help to ensure the accuracy of the NASD's rules.

B. NASD/BSE TRF LLC

The NASD and the BSE will jointly own the NASD/BSE TRF LLC, which will operate the NASD/BSE TRF. The NASD has filed the LLC Agreement as part of the current proposal.[46] The LLC Agreement is substantially similar to the limited liability company agreement of the NASD/Nasdaq TRF LLC (''NASD/Nasdaq TRF LLC Agreement'') that the Commission approved in the NASD/Nasdaq TRF Approval Order[47] and to the limited liability company agreement of the NASD/NSX TRF that the Commission approved in the NASD/NSX TRF Approval Order.[48] Accordingly, for the reasons discussed in the NASD/Nasdaq TRF Approval Order with respect to the NASD/Nasdaq TRF LLC Agreement, the Commission finds that the LLC Agreement is consistent with the Act.[49]

The Commission notes that the NASD/BSE TRF LLC, as the operator of an NASD facility, is an integral part of a SRO registered pursuant to the Act and, as such, is subject to obligations imposed by the Act. The Commission underscores that these obligations endure so long as the NASD/BSE TRF LLC operates an NASD facility.

The Commission believes that the LLC Agreement makes clear that the NASD will have sole regulatory responsibility for the activities of NASD members related to the facility operated by the NASD/BSE TRF LLC and provides the NASD with certain rights that are intended to preserve its regulatory authority and control.[50] The Commission believes that the provisions of the LLC Agreement will allow the NASD to carry out its self-regulatory responsibilities with respect to its facility and that both the Commission and the NASD will have sufficient regulatory jurisdiction over the controlling parties of the NASD/BSE TRF LLC to carry out their responsibilities under the Act.

For example, under the LLC Agreement, each Member and each director of the NASD/BSE TRF LLC agrees to comply with the federal securities laws and rules and regulations thereunder and to cooperate with the Commission pursuant to its regulatory authority and the provisions of the LLC Agreement. In addition, the NASD and the BSE acknowledge in the LLC Agreement that—to the extent directly related to the NASD/BSE TRF LLC's activities—their books, records, premises, officers, directors, governors, agents, and employees will be deemed to be the books, records, premises, officers, directors, governors, agents, and employees of the NASD itself and its affiliates for the purposes of, and subject to oversight pursuant to, the Act. This provision will reinforce the Commission's ability to exercise its authority under Section 19(h)(4) of the Act[51] with respect to the officers and directors of the NASD/BSE TRF LLC because all such officers and directors-to the extent that they are acting in matters related to the NASD/BSE TRF LLC's activities-would be deemed to be the officers and directors of the NASD itself. Furthermore, under the LLC Agreement, the records of the NASD and BSE, to the extent that they are related to the NASD/BSE TRF LLC's activities, are deemed to be records of the NASD itself and are subject to the Commission's examination authority under Section 17(b)(1) of the Act.[52]

The LLC Agreement also provides that the NASD and the BSE, and each officer, director, agent, and employee thereof, irrevocably submits to the jurisdiction of the U.S. federal courts, the Commission, and the NASD for the purpose of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder arising from, or relating to, the NASD/BSE TRF LLC's activities.

The Commission also believes that the requirements of Section 19(b) of the Act and Rule 19b–4 thereunder provide the Commission with sufficient authority over changes in control of the NASD/BSE TRF LLC to enable the Commission to carry out its regulatory oversight responsibilities with respect to the NASD and its facilities.

The Commission notes that the NASD is required to enforce compliance with the provisions of the LLC Agreement because they are ''rules of the association'' within the meaning of Section 3(a)(27) of the Act.[53] A failure on the part of the NASD to enforce its rules could result in a suspension or revocation of its registration pursuant to Section 19(h)(1) of the Act.[54]

C. Accelerated Approval of the Proposed Rule Change as Amended by Amendment No. 1

The Commission finds good cause for approving the proposed rule change as amended by Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in

[43] *See* NASD Rules 4632C(h) and 6130C(g) (governing the NASD/NSX TRF); and 4632D(i) and 6130D(g) (governing the NASD/BSE TRF).

[44] *See* NASD/NSX TRF Approval Order, *supra* note 8.

[45] *See* note 42, *supra*.

[46] The Commission notes that any changes to the LLC Agreement that are stated policies, practices, or interpretations of the NASD, as defined in Rule 19b–4 under the Act, must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

[47] *See* note 7, *supra*.

[48] *See* note 8, *supra*.

[49] The Commission incorporates by reference the discussion and analysis of the NASD/Nasdaq TRF LLC and NASD/Nasdaq TRF LLC Agreement set forth in the NASD/Nasdaq TRF Approval Order, *supra* note 7.

[50] For example, pursuant to the LLC Agreement, the NASD must consent before certain ''Major Actions,'' as defined in the LLC Agreement, with respect to the NASD/BSE TRF LLC are effective.

[51] 15 U.S.C. 78s(h)(4). Section 19(h)(4) of the Act authorizes the Commission, by order, to remove from office or censure any officer or director of an SRO if it finds after notice and an opportunity for hearing that such officer or director has: (1) Willfully violated any provision of the Act or the rules and regulations thereunder, or the rules of such SRO; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse, has failed to enforce compliance with any such provision by a member or person associated with a member of the SRO.

[52] *See* Section 17(c) of the LLC Agreement.

[53] 15 U.S.C. 78c(a)(27).

[54] 15 U.S.C. 78s(h)(1).

the **Federal Register**. As described more fully above, the changes to NASD Rules 4362D(a), 4632D(g), and 6130D(f) adopt provisions for the NASD/BSE TRF that are identical to or substantially the same as existing NASD rules. The Commission believes that these changes do not raise new regulatory issues and will help to provide consistency in the NASD's trade reporting rules. Amendment No. 1 also revises the rules of the NASD/NSX TRF and the NASD/BSE TRF to include an express prohibition on the aggregating of trades for purposes of trade reporting to these facilities. The Commission believes that this change strengthens and clarifies the rules governing the NASD/NSX TRF and the NASD/BSE TRF by providing an express prohibition on the aggregating of trades for purposes of trade reporting to the facilities. Finally, Amendment No. 1 includes technical changes that correct errors in the text of the NASD/BSE TRF's rules, thereby helping to ensure the accuracy of the NASD's rules. For these reasons, the Commission finds that it is consistent with Sections 15A(b)(6) and 19(b) of the Act to approve the proposed rule change as amended by Amendment No. 1 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change as amended by Amendment No. 1, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–115 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–115. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–115 and should be submitted on or before January 10, 2007.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[55] that the proposed rule change (SR–NASD–2006–115), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[56]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21660 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54928; File No. SR–NSCC–2006–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Wind-Down of a Member

December 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 28, 2006, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on September 28, 2006, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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 add a new Rule 42, Wind-Down of a Member, Fund Member, or Insurance Carrier Member,[2] to NSCC's Rules to address a situation where a member notifies NSCC that it intends to wind down its activities and NSCC determines in its discretion that it must take special action in order to protect itself and its participants.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule would allow NSCC to determine that a member is a wind-down member and would set forth the conditions NSCC using its discretion could place on a wind-down member and the actions NSCC using its discretion could take with respect to a wind-down member to protect itself and its members. Such actions would include restricting or modifying the wind-down member's use of any or all of NSCC's services and requiring the wind-down member to post increased clearing fund deposits. NSCC would retain all of its other rights set forth in its rules and membership agreements, including the right to declare the wind-down member insolvent, if applicable, and to cease to act for the member.

NSCC believes that the proposed rule would ensure that it has the needed flexibility to appropriately manage the risks presented by an entity in crisis that remains a member of NSCC. This is

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The text of NSCC's proposed Rule 42 can be found on NSCC's Web site at *http://www.nscc.com.*

[3] Similar proposed rule changes have been filed by The Depository Trust Company [File No. SR–DTC–2006–07] and the Fixed Income Clearing Corporation [File No. SR–FICC–2006–05].

[4] The Commission has modified parts of these statements.

particularly important to preserve orderly settlement in the marketplace and to minimize the risk of loss to NSCC and its members. The proposed rule summarizes in a single rule NSCC's rights and the actions it may take in such a situation. These rights and actions are either permitted elsewhere in NSCC's rules or are permitted pursuant to NSCC's emergency authority. By summarizing them in a single rule, however, the proposed rule change should provide clarity and a clear legal basis for NSCC's rights or actions taken with respect to a wind-down member. NSCC also believes that the proposed rule is designed to minimize the need for rule waivers.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will enhance NSCC's rules regarding actions that NSCC may take with respect to a wind-down of a member that presents risk to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any impact or 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 relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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–NSCC–2006–05 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–NSCC–2006–05. 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 NSCC and on NSCC's Web site at *http://www.nscc.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–NSCC–2006–05 and should be submitted on or before January 10, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21706 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54921; File No. SR–NSCC–2006–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Clarifying and Technical Changes to its Insurance Processing Service

December 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 2, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to make clarifying and technical changes to NSCC's Rule 57 regarding NSCC's Insurance Processing Service (''IPS'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by NSCC.

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 make clarifying and technical changes to Rule 57 of NSCC's Rules regarding IPS. NSCC proposes to reformat Rule 57 for clarity. References to services or functionalities that are not currently offered would be deleted and to those that have changed since the rule was initially written would be revised accordingly. These changes are explained below.

Reformatting of Rule 57 Rule 57 is being reorganized such that (i) Section 1 of the rule now consolidates all of the general provisions that will generally apply to all IPS services and (ii) each subsequent section (Sections 2 through 10) applies to a separate service offering within IPS. This differs from the format of the current rule in which some of the services are referenced in a list contained in Section 1 of the rule and certain other of the services are described in separate, individual sections of the rule.

Section 1 Section 1 will contain all of the general provisions that apply to all services within IPS. Most of these general provisions are contained in Sections 1 and 2 of the current Rule 57 and with some exceptions are repeated in subsequent sections of the current rule with respect to specific services.

The statement currently contained in Addendum D of NSCC's Rules, which states that that NSCC does not guarantee money settlement of IPS transactions, is being restated in Subsection (l) of Section 1 of the rule. Repositioning the statement in the rule which governs the insurance services will help clarify to applicants and members that IPS is not a ''guaranteed service.''

The last two sentences of current Subsection (d) of Section 2 of Rule 57, which state that NSCC would adjust IPS data on the instruction of a participant, are being deleted. Because NSCC acts as a pass-through of IPS data, it would not generally be expected to make adjustments on such data.

Provisions contained in Sections 1 and 2, which are specific to a particular service offering within IPS, of the current Rule 57 are being deleted and moved to subsequent sections that are dedicated to that particular service offering. For example, the material regarding application information is being moved to Section 3, ''Applications and Premiums.''

Section 2, ''Commissions and Compensation'' Section 2 will set forth the provisions specific to the commission service offered in IPS, which provisions are currently in Section 3. The service, currently named ''Commissions and Charge Backs,'' is being renamed ''Commissions and Compensation'' to reflect that the service currently accommodates other types of compensation payable between insurance carriers and distributors such as bonus amounts. General provisions that are not specific to the Commissions and Charge Backs service and that apply generally to all IPS services are being deleted from this section and placed in Section 1 as discussed above.

Sections 3(d) and (e) of the current rule, which state that NSCC may offer members the ability to cancel commission transactions, are being deleted. At the time the commission service was originally proposed, NSCC anticipated that it would develop such an enhancement.[5] The enhancement has not been developed and there are no plans to develop it at this time.

The provisions in the current rule regarding the date on which commission transactions may settle are being rewritten to use terminology consistent with analogous provisions elsewhere in the rules.

Section 3, ''Applications and Premiums'' Section 3 will set forth the provisions that are specific to the applications and premiums services in IPS, which provisions are currently in Sections 2 and 4. The provisions of the current Sections 2 and 4 that are of general applicability to all IPS services are deleted from these sections and placed in Section 1 as discussed above.

Section 2 (e) of the current rule, which states that NSCC will reject application data if it has four or more errors, is being deleted. The precise data requirements of the various services change from time to time as new fields are added or deleted or made mandatory or optional, and the data requirements therefore are more typically contained in the NSCC user guides and other documentation rather than being set forth in the text of the NSCC Rules.

Section 4, ''Licensing and Appointments'' Section 4 will set forth the provisions specific to the licensing and appointments services within IPS. In the current rule, the reference to the licensing and appointments service is contained in Sections 1 and 4 in the list of types of data that may be transmitted through IPS.

Section 5, ''Positions and Valuations'' Section 5 will set forth the provisions specific to the positions and valuations services within IPS. Section 5 of the current rule, which regards a product repository service which may be offered by NSCC, is being deleted. NSCC determined not to offer this service after the proposed rule change for the service had been filed and approved.[6] NSCC has no plans to offer such a service at this time and would file a proposed rule change should it determine to do so after this provision is deleted from the rules.

Section 6, ''ACATS/Transfers'' Section 6 will set forth the provisions specific to the ACATS transfer service within IPS and is reworded slightly differently from the current Section 6 in order to use terminology that is consistent with analogous terminology elsewhere in NSCC's rules.

Section 7, ''Asset Pricing'' Section 6 sets forth the provisions specific to the asset pricing service within IPS.

Section 8, ''Financial Activity Reporting'' Section 7 will set forth the provisions specific to the financial activity reporting service within IPS, which service is referenced in Section 1 of the current rule in the list of types of data that may be transmitted through IPS.

Section 9,''In Force Transactions'' Section 9 will set forth the provisions specific to the In Force Transactions services within IPS.

Section 10, ''InsurExpress'' Section 10 will set forth the provisions specific to the InsurExpress service within IPS. This service was the subject of a proposed rule change regarding the insurance service that was proposed to be offered under the name ''Portal.''[7]

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because in clarifying NSCC's Rules to more accurately and clearly set forth the nature of the insurance processing services already offered by NSCC, the proposed rule change effects a change in an existing service of NSCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC and (ii) does not significantly affect the respective rights or obligations of NSCC or those members using the service.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any

[5] Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 (September 25, 1997) [File No. SR–NSCC–96–21].

[6] Securities Exchange Act Release No. 47644 (April 7, 2003), 68 FR 17850 (April 11, 2003) [File No. SR–NSCC–2003–04].

[7] Securities Exchange Act Release No. 48896 (December 9, 2003), 68 FR 70553 (December 18, 2003) [File No. SR–NSCC–2003–18].

impact or 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 relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(4) thereunder[9] because the proposed rule effects a change in an existing service of NSCC that (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC and (ii) does not significantly affect the respective rights or obligations of NSCC or those members using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2006–14 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-NSCC–2006–14. 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 NSCC and on NSCC's Web site at *http://www.nscc.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–NSCC–2006–14 and should be submitted on or before January 10, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21717 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54935; File No. SR–OCC–2006–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Cash-Settled Foreign Currency Options

December 13, 2006.

I. Introduction

On June 8, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2006–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On October 26, 2006, OCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on November 17, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change will 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''). While OCC's By-Laws and Rules currently provide for the clearance and settlement of Cash-Settled FCOs, changes to OCC's By-Laws are needed in connection with the Cash-Settled FCOs that are 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 expiration 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 be amended to provide for an expiration date on 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 providing for expirations on such other dates as an exchange may determine, which is consistent with the definition of ''expiration date'' applicable to index options. OCC is also amending Article VI, Section 22 of its By-Laws to make clear that Cash-Settled FCOs will not clear through OCC's International Clearing System.[4]

OCC amended the proposed rule change on October 26, 2006, to amend 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.

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[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54721, (November 8, 2006), 71 FR 67004.

[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]. Currently, there are no cash-settled FCOs traded at any options exhange.

[4] Interpretation .02 of 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.''

The primary conforming changes are the addition of procedures under which the exercise settlement amount will 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.

The amendment also modified 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 provided for true automatic exercise without the opportunity for clearing members to give non-exercise instructions. Phlx 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 the ''exercise-by-exception'' procedures, a Cash-Settled FCO will 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 adding 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.

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.[5] The purpose of the proposed rule change is to amend OCC's By-Laws and Rules so that OCC may clear and settle the new Cash-Settled FCO product proposed to be listed and traded on Phlx. Accordingly, the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions.

OCC has requested that the Commission approve the proposed rule prior to the thirtieth day after publication of the notice of the amended filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow OCC to give its members sufficient notice of its clearance and settlement of Cash-Settled FCOs before trading begins.

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.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2006–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21684 Filed 12–19–06; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10757 and #10758]

Washington Disaster # WA–00007

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–1671–DR), dated 12/12/2006.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 11/02/2006 through 11/11/2006.

DATES: *Effective Date:* 12/12/2006.

Physical Loan Application Deadline Date: 2/12/2007.

Economic Injury (Eidl) Loan Application Deadline Date: 9/12/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/12/2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Clark, Cowlitz, Grays Harbor, King, Lewis, Pierce, Skagit, Skamania, Snohomish, Thurston, and Wahkiakum.

Contiguous Counties (Economic Injury Loans Only):

Washington: Chelan, Island, Jefferson, Kitsap, Kittitas, Klickitat, Mason, Okanogan, Pacific, Whatcom, and Yakima.

Oregon: Clatsop, Columbia, Hood River, and Multnomah.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.000
Homeowners Without Credit Available Elsewhere	3.000
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 107576 and for economic injury is 107580.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–21679 Filed 12–19–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5647]

60-Day Notice of Proposed Information Collection: DS–4048, Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act; OMB Control Number 1405–0156

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for information collection described below. The purpose of this notice is to allow 60 days for

public comments in the **Federal Register** preceding submission to OMB of the Form DS–4048 as the means of collecting the information. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act.
- *OMB Control Number:* 1405–0156.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DS–4048.
- *Respondents:* Business organizations.
- *Estimated Number of Respondents:* 20 (total).
- *Estimated Number of Responses:* 20 (per year).
- *Average Hours Per Response:* 60 hours.
- *Total Estimated Burden:* 1,200 hours (per year).
- *Frequency:* Once a Year.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from December 20, 2006.

ADDRESSES: Comments and questions should be directed to Patricia C. Slygh, the Acting Director of the Office of Defense Trade Controls Management, Department of State, who may be reached via the following methods:

- *E-mail: slyghpc@state.gov.*
- *Mail:* Patricia C. Slygh, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.
- *Fax:* 202–261–8199.

You must include the DS form number, information collection title, and OMB control number in the subject lines of your message/letter.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the information collection and supporting documents, to Patricia C. Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via e-mail at *slyghpc@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Section 25 of the Arms Export Control Act requires an annual report to Congress on projected sales of major weapons (if $7M or more) and non-major weapons (if $25M or more). In order to prepare this report, the Directorate of Defense Trade Controls (DDTC) requests information from selected defense companies, registered with DDTC, on relevant projected sales, including information on the foreign country to which the item is to be sold, a description of the item, the item's quantity, and its value.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: mail, personal delivery, fax, and/or electronically.

Dated: December 8, 2006.

Gregory M. Suchan,

Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. E6–21730 Filed 12–19–06; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 5648]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Comic Abstraction: Image-Breaking, Image-Making''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Comic Abstraction: Image-Breaking, Image-Making'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, New York, beginning on or about March 4, 2007 until on or about June 11, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: December 12, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–21729 Filed 12–19–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[PUBLIC NOTICE 5649]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Pissarro: Creating the Impressionist Landscape''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Pissarro: Creating the Impressionist Landscape'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Baltimore Museum of Art, Baltimore, Maryland, beginning on or about February 11, 2007 until on or about May 13, 2007, the Milwaukee Museum of Art, Milwaukee, Wisconsin, beginning on or about June 10, 2007 until on or about September 9, 2007,

and the Memphis Brooks Museum of Art, Memphis, Tennessee, beginning on or about October 7, 2007 until on or about January 6, 2008, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: December 12, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–21728 Filed 12–19–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise-Exposure Map Notice: Receipt of Noise-Compatibility Program and Request for Review for Portland International Airport, Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise-exposure maps (NEM) submitted by the Director of Aviation for Portland International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise-compatibility program that was submitted for Portland International Airport under Part 150, in conjunction with the noise-exposure map, and that this program will be approved or disapproved on or before June 15, 2007.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise-exposure maps and of the start of its review of the associated noise-compatibility program is December 13, 2006. The public comment period ends February 15, 2006.

FOR FURTHER INFORMATION CONTACT: Cayla Morgan, Federal Aviation Administration, Seattle Airports Division, 1601 Lind Ave. SW., Renton, WA, 98057–3356, telephone 425–227–2653. Comments on the proposed noise-compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise-exposure maps submitted for Portland International Airport are in compliance with applicable requirements of Part 150, effective December 13, 2006. Further, the FAA is reviewing a proposed noise-compatibility program for that airport which will be approved or disapproved on or before June 15, 2007. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise-exposure maps which meet applicable regulations and which 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 noise-exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR), Part 150, promulgated pursuant to the Act, may submit to the FAA for approval a noise-compatibility program that sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Director of Aviation for the Portland International Airport submitted to the FAA on October 5, 2006, noise-exposure maps, descriptions and other documentation that were produced during the Portland International Airport FAR Part 150 Study dated October 2006. It was requested that the FAA review this material as the noise-exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise-compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise-exposure maps and related descriptions submitted by the director of the Portland International Airport. The specific documentation determined to constitute the noise-exposure maps includes the following from the *Portland International Airport Part 150 Noise-Compatibility Study Update:*

- Section B. Forecasts of Aviation Activity;
- Pages D28 through D49, and D68 through D72 describe the input data used to develop the existing and future contours;
- Section E—Land Use Analysis;
- Table D7 at Page D32, Detailed Breakdown of Aircraft Operations;
- Table D14 at Page D69, Operations by Aircraft Category for 2008 Forecast;
- Table D15 at Page D71, Aircraft Fleet Mix Assumptions for Future (2008) Conditions;
- Page H1—Noise-exposure Map Supplemental Information;
- Figure H1 at page H14, Future (2011) Existing Noise-exposure Map;
- Figure H2 at page H15 Existing (2005) Noise-exposure Map;
- Section I—Public and Airport User Consultation Summary;
- Appendix A—Public Hearing Comments and Responses
- Appendix B—Comments Outside the Public Hearing Comment Period;

The FAA has determined that these maps for Portland International Airport are in compliance with applicable requirements. This determination is effective on December 13, 2006. The 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 47503 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 47506 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 the FAA's review of noise-exposure maps. 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 those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 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.

The FAA has formally received the noise-compatibility program for Portland International Airport, also effective on December 13, 2006. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise-compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 15, 2007.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. The FAA will consider, to the extent practicable, all comments, other than those properly addressed to local land-use authorities. Copies of the noise-exposure maps, the FAA's evaluation of the maps, and the proposed noise-compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98057–3356.

Federal Aviation Administration, Seattle airports District Office, 1601 Lind Avenue, SW., Suite 250, Seattle, WA 98057–3356.

Portland International Airport, 7000 NE Airport Way, Portland, OR 97208.

* * * * *

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

J. Wade Bryant,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 06–9784 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–26519]

Notice of a Proposed Change in Monitor Status of Air Navigational Aids

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on a proposal to change the monitor status of select air navigational aids (NAVAIDS) at airports in the United States. The FAA is proposing that certain Instrument Landing Systems (ILS), Localizer Type Directional Aids (LDA), Microwave Landing Systems (MLS), and Non-Directional Beacons (NDB) become unmonitored.

The ILS NAVAIDS at the following airports are proposed to become unmonitored during the times that the control tower is closed. The associated ILS approaches for these airports are either not authorized for alternate airport filing purposes when the control tower is closed or the airport activity is low when the control tower is closed:

(1) Florence, South Carolina (FLO), ILS, Runway 9. (2) Joplin, Missouri (JLN), ILS, Runways 13 and 18. (3) Macon, Georgia (MCN), ILS, Runway 5. (4) Manhattan, Kansas (MHK), ILS, Runway 3. (5) Mobile, Alabama (MOB), ILS, Runways 14 and 32. (6) Missoula, Montana (MSO), ILS, Runway 11. (7) North Myrtle Beach, South Carolina (CRE), ILS, Runway 23. (8) Savannah, Georgia (SAV), ILS, Runways 9 and 36. (9) Tallahassee, Florida (TLH), ILS, Runway 36. (Tallahassee ILS, Runway 27 will not be affected because of its ILS Category II status.) (10) Walla Walla, Washington (ALW), ILS, Runway 20.

The following ILS NAVAIDS are proposed to become unmonitored due to low annual activity at the associated airport:

1) Bemidji, Minnesota (BJI) ILS, Runway 31. (2) Huron, South Dakota (HON), ILS, Runway 12. (3) Hoquiam, Washington (HQM), ILS, Runway 24. (4) International Falls, Minnesota (INL), ILS, Runway 31. (5) Liberal, Kansas (LBL), ILS, Runway 35. (6) Muscle Shoals, Alabama (MSL), ILS, Runway 29. (7) Norfolk, Nebraska (OFK), ILS, Runway 1.

The following NAVAIDS associated with non-precision approaches are proposed to become unmonitored:

(1) Charles City, Iowa (CCY), ILS Localizer, Runway 12. (2) Conrad, Montana (SO1), Conrad (CRD) NDB. (3) Elkins, West Virginia (EKN), LDA/DME. (4) Elko, Nevada (EKO), LDA/DME, Runway 23. (5) Miles City, Montana (MLS), Horton (HTN) NDB. (6) Mountain Home Municipal, Idaho (U76), Sturgeon (STI) NDB. (7) Ontario, Oregon (ONO), Ontario (ONO) NDB. (8) Pullman/Moscow ID, Washington (PUW), MLS. (9) Rawlins, Wyoming (RWL), Sinclair (SIR) NDB. (10) Wenatchee, Washington (EAT), MLS.

DATES: Comments must be received by January 19, 2007.

ADDRESSES: Written comments may be submitted [identified by Docket Number FAA–2006–26519] using any of the following methods:

DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: 1–200–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: All comments received will be posted, without change, to *http://dms.dot.gov,* including any personal information you provide (such as signatures on behalf of an association, business, labor union, or any other group). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or by visiting *http://dms.dot.gov.*

Docket: To read the comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dave Joyce, Technical Operations Services, AFSS Transition Lead; Mail Drop: AJW–24, Room 706, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493–4780; Fax (202) 267–5303; e-mail *Dave.Joyce@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons or organizations to submit written comments or views concerning this proposal. Please reference the Docket Number at the beginning of your comments. Comments should be specific and should explain the reason for your concurrence or non-

concurrence with the proposal, including supporting data.

Please send two (2) copies of your comments to one of the addresses listed in the **ADDRESSES** section of this document.

All comments submitted will be available for public viewing either in person or online, including any personal information you provide. Please refer to the PRIVACY section of this document.

Issued in Washington, DC on December 12, 2006.

Richard Thoma,

Director, Safety and Operations Support Office, Technical Operations Services.

[FR Doc. 06–9776 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issue Area—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC). This notice is to inform the public of this ARAC activity and solicit membership to a new Propeller Harmonization Working Group to support ARAC in developing advice and recommendations on this new task.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, Rulemaking and Policy Branch, Engine and Propeller Directorate, ANE–110, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7116; facsimile (781) 238–7199; e-mail *jay.turnberg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 22, 1991 (56 FR 2190), the Federal Aviation Administration (FAA) established the Aviation Rulemaking Advisory Committee (ARAC) to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities for aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe, Canada, and Brazil.

In order to develop such advice and recommendations, the ARAC may choose to establish a working group to which a specific task is assigned. The working group would be comprised of experts from those organizations having an interest in the assigned task. A working group member need not be a representative of the full committee. For this task, ARAC has chosen to establish a new Propeller Harmonization Working Group.

In 1999, the Propeller Harmonization Working Group (PHWG) reached consensus on a harmonized version of part 35 and JAR–P, with a few exceptions, and submitted those proposed requirements to the ARAC. The PHWG has been inactive for a number of years. Because ARAC was unable to reach consensus on a propeller critical parts requirement, the FAA decided to table the issue for re-evaluation at a future date. Subsequently, the European Aviation Safety Agency (EASA) published CS–P 160 Propeller Critical Parts Integrity rule. The FAA does not have a similar requirement; however, we believe a requirement for propeller critical parts warrants consideration for inclusion in 14 CFR part 35. We have asked ARAC to address this new task as part of the Transport Airplane and Engine (TAE) Issues. ARAC has decided to establish a new Propeller Harmonization Working Group to support this activity.

The Task

The ARAC has accepted the task to provide information about specific propeller critical parts integrity requirements for part 35, and make recommendations for revising part 35 and guidance material, as appropriate. The Propeller Harmonization Working Group (PHWG) will—

1. Review the background and intent of relevant existing requirements, existing guidance material, related ARAC recommendations on part 35, and the current EASA requirements for propeller critical parts integrity.

2. Develop a report containing recommendations for rulemaking or guidance material, or both, and explain the rationale and safety benefits for each proposed change. The report will define a standardized approach for applying specific propeller critical parts integrity in the appropriate circumstances. The FAA will define the report format to ensure the report contains the necessary information for developing a Notice of Proposed Rulemaking (NPRM), Advisory Circular (AC), or both.

3. Make recommendations to ARAC for acceptance and submission to the FAA.

If a NPRM or proposed AC is published for public comment as a result of the recommendations from this tasking, the FAA may ask ARAC to review the comments received and provide a recommendation for disposition of comments for each issue.

ARAC Acceptance of Task

ARAC accepted the task and will establish a new Propeller Harmonization Working Group to serve as staff to the ARAC and assist in the analysis of the task. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA. The FAA will submit the recommendations it receives to the agency's Rulemaking Management Council to address the availability of resources and prioritization.

Working Group Activity

The PHWG must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the next meeting of ARAC on Transport Airplane and Engine Issues held following publication of this notice.

2. Give a detailed conceptual presentation on the proposed recommendation(s), before continuing with the work stated in item 3 below.

3. If proposed rule changes are recommended, provide supporting economic and other required analyses. If new or revised requirements or compliance methods are not recommended, provide a draft report stating the rationale for not making such recommendations; and

4. Provide a status report at each meeting of the ARAC held to consider propeller critical parts integrity issues.

Participation in the Working Group

The PHWG will be comprised of technical experts having an interest in the assigned task. A working group member does not need to be a representative or member of ARAC. The PHWG membership will have broad propeller critical parts integrity experience. As needed, the PHWG may organize, oversee, guide, and monitor the activities and progress of task groups comprised of subject matter experts (SMEs).

If you have expertise in the subject matter and wish to become a member of the working group, contact the person listed under the caption **FOR FURTHER**

INFORMATION CONTACT. Describe your interest in the task and state the expertise you would bring to the working group. We must receive all requests by January 24, 2007. The assistant chair, the assistant executive director, and the FAA representative will review the requests and notify you if your request is approved.

If you are chosen for membership on the working group, you must represent your aviation community segment and actively participate in the working group by attending all meetings and provide written comments when requested to do so. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management chain and those you may represent advised of working group activities and decisions to ensure the proposed technical solutions don't conflict with your sponsoring organization's position when the subject being negotiated is presented to ARAC for approval. Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC are open to the public. Meetings of the PHWG will not be open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on December 13, 2006.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. E6–21651 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revision of the Cancellation of Preparation of Environmental Impact Statement (EIS) for Ontario International Airport, Ontario, San Bernardino County, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revision of Notice of Cancellation of Preparation of Environmental Impact Statement.

SUMMARY: On December 1, 2006, the FAA terminated preparation of the EIS at Ontario International Airport (ONT) since there are no proposed projects ripe for review. Los Angeles World Airports, the airport owner, will continue to prepare a master plan for ONT.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Environmental Protection Specialist, Federal Aviation Administration, Los Angeles Airports District Office, P.O. Box 92007, Los Angeles, California 90009–2007, Telephone: (310) 725–3637.

SUPPLEMENTARY INFORMATION: On December 1, 2006, the FAA issued a notice announcing it was canceling preparation of an EIS for Ontario International Airport, Ontario, San Bernardino County, California in the **Federal Register** (71 FR 74573). FAA is revising its notice to clarify Los Angeles World Airports will continue to prepare a master plan for ONT.

Dated: Issued In Hawthorne, California, on December 13, 2006.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 06–9783 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2005–22842]

Military Airport Program (MAP) Application; Extension of Application Deadline

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

ACTION: Notice of extension of application deadline for participation in the Military Airport Program (MAP) for the fiscal year 2007.

SUMMARY: The Federal Aviation Administration (FAA) is extending to January 19, 2007, the date to submit an application for the MAP. The original notice, Notice of Opportunity to Participate, criteria requirements and application procedure for participation in the MAP appeared in the **Federal Register** on October 16, 2006 (71 FR 60791). In that Notice of Opportunity to Participate, FAA requested applications be received on or before November 27, 2006. The agency is taking this action in response to requests for an application deadline extension to allow interested persons additional time to submit applications.

DATES: Submit applications by January 19, 2007.

ADDRESSES: Submit an original and two copies of *Standard Form (SF) 424*, ''Application for Federal Assistance,'' prescribed by the Office of Management and Budget Circular A–102, available at *http://www.faa.gov/arp/ace/forms/sf424.doc,* along with any supporting and justifying documentation. Applicant should specifically request to be considered for designation or redesignation to participate in the fiscal year 2007 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA Web site *http://www.faa.gov/arp/regions.cfm?nav=regions* or may contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. Ball (*Kendall.Ball@faa.gov*), Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–7436.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 16, 2006 (71 FR 60791), FAA published a notice of Opportunity to Participate, criteria requirements and application procedure for designation or redesignation in the MAP.

The agency has received multiple requests for an extension of the date to submit an application. FAA has considered the requests and is extending the date to submit an application for 30 days, until January 19, 2007. The agency believes that a 30-day extension allows adequate time for interested persons to submit applications without significantly delaying the implementation of the MAP.

Dated: December 14, 2006.

James R. White,

Acting Director, Officer of Airport Planning and Programming.

[FR Doc. 06–9782 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 25, Notice No. 1]

Toledo, Peoria and Western Railway; Emergency Order To Prevent Operation of Trains on Railroad Bridge No. 29.11 of the Toledo, Peoria and Western Railway

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Toledo, Peoria and Western Railway (TPW, a subsidiary of RailAmerica, Inc., to discontinue operation of trains or any railroad on-track equipment by anyone on a railroad bridge it owns spanning Prairie Creek (hereinafter designated as ''Bridge 29.11'') near the City of LaHogue, Illinois. The bridge shall remain out of service until it has been properly repaired and its capacity determined by a registered professional engineer licensed to practice in the State of Illinois who is technically proficient in the field of timber railroad bridge engineering.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death or personal injury.'' 49 U.S.C. 20104. These orders may impose such ''restrictions and prohibitions * * * that may be necessary to abate the situation.'' (Ibid.)

Background

TPW, a common carrier, is a part of the general railroad system of transportation. The track segment in which the Bridge 29.11 is located extends approximately 180 miles from Peoria, Illinois to Logansport, Indiana.

TPW Bridge 29.11 crosses Prairie Creek at Mile Post 29.11, one-half mile east of LaHogue, Illinois. The bridge is approximately 100 feet north of County Road 1800N and one-half mile east of County Road 200E. Approximate geographic coordinates are 40°45′50.5″ North latitude and 88°04′46.4″ West longitude. There is no commercial water traffic on Prairie Creek.

TPW hauls mixed freight, including hazardous material, across the bridge. Current traffic levels are two trains per day, one each way, six days a week. Car weights are limited by TPW to 286,000 pounds.

Configuration of the Bridge

The bridge carries a single tangent main track. Its total length is 58 feet. It incorporates three Spans, numbered east to west as spans 1, 2 and 3. For reference in this and other documents relating to this Emergency Order, the bridge components are numbered from east to west and north to south, with the east end bent or abutment numbered as 0, and the north stringer in each span numbered as 1.

Superstructure

Spans 1 and 3 are timber pile trestle-type of approximately 13 feet in length. Span 2, approximately 30 feet in length, is of the deck plate girder design, with two built-up girders placed under this track.

Spans 1 and 3 each have eight timber stringers, 8 inches wide by 16 inches deep by 14 feet long. Four stringers are bolted together into each of two chords which are essentially centered under each rail. Span 2 is a 30 foot steel deck plate girder-type span two girders supporting the track.

Substructure

End bents 0 and 3 consist of five driven timber piles with a timber cap. Intermediate bents 1 and 2, which also support the steel girders of span 2, each have two rows of six driven timber piles. Each row of piles in bents 1 and 2 has a timber cap and one row of timber cross blocking above the caps. Above the cross blocking under the deck plate girder span are two transverse timbers laid side by side. Above the cross blocking under the timber spans there are three transverse timbers stacked on top of each other.

Track

Track ties rest directly on top of the stringers, and support in turn tie plates and the two continuously welded running rails, 112 pounds per yard. There are no rail joints on the bridge. A metal strap is attached to the top of the outside edge of the ties to maintain spacing.

FRA Activity Related to the Bridge

On August 8, 2006, two FRA Bridge Safety Specialists, on FRA Chief Inspector and a TPW Track Foreman observed the bridge. The serious bridge conditions and a track defect (warp) on the bridge were noted and discussed with the TPW Track Foreman. FRA determined that the warp condition on the bridge was caused by deteriorated and crushing stringers. On August 11, 2006, an FRA Bridge Safety Specialist discussed the condition of this bridge with TPW's Roadmaster. A conference call was held on August 31, 2006, with FRA, TPW, and RailAmerica officials specifically to discuss bridge conditions on the TPW and TPW's bridge management program. During this call, the condition of this bridge was discussed. TPW and RailAmerica officials agreed to immediately repair this and other bridges. On October 31, 2006, an FRA Bridge Safety Survey Report of the TPW was sent to TPW and RailAmerica officials. The condition of this bridge was shown on page 4 of that report.

An FRA Bridge Safety Specialist conducted an observation of the bridge on December 13, 2006, after notifying TPW several days in advance of his plans. TPW elected not to accompany the FRA specialist during that observation, which was conducted from below the bridge. The FRA observation of the bridge on December 13, 2006, revealed no evidence of repairs to the bridge or the track since the initial bridge observation on August 8, 2006. The condition of the bridge on December 13, 2006, enumerated below, is the basis for FRA to issue this Emergency Order.

Condition of the Bridge

The FRA observation of Bridge 29.11 on December 13, 2006, revealed the following conditions:

Span 1:
- Stringer 1—West end is hollow, decayed and crushing with horizontal cracking.
- Stringer 2—West end is hollow and decayed.
- Stringer 3—West end is decayed.
- Stringer 4—Horizontal shear crack entire length. West end is hollow, decayed and crushing.
- Stringer 5—Horizontal shear crack entire length. West and is hollow, decayed and crushing.
- Stringer 6—West end is hollow and decayed.
- Stringer 7—West end is hollow and decayed.
- Stringer 8—Stringer has failed.

Span 3:
- Stringer 1—West end is crushing severely with multiple horizontal cracks. East end hollow.
- Stringer 2—East end hollow
- Stringer 3—West end of the stringer appears to be crushing. East end hollow.
- Stringer 4—Horizontal shear crack

entire length. West end is crushing. East end hollow.
Stringer 5—West end hollow with numerous horizontal cracks. East end hollow.
Stringer 6—East end hollow.
Stringer 7—East end hollow.
Stringer 8—West end hollow, decayed and crushing with horizontal cracks.

In span 1, a vertical gap of approximately .75 inches exists between the south rail and the tie plates, and a vertical gap of 1.25 inches exists between the track ties and stringer 8 at the southwest corner of the span.

Span 1 was observed while a westbound mixed freight train crossed the bridge at approximately 10 miles per hour. Vertical deflection of stringer 8 was measured at mid-span by attaching a tape measure to the stringer and referencing the movement against a fixed object near the ground. Several loaded cars each caused a deflection of approximately 1.25 inches. A deflection measurement was not taken while the locomotive was on the span. Significant vertical deflection was also observed but not measured in span 3.

Many of the cross blocks in bents 1 and 2 have various degrees of decay and voids. The timber under the west end of the stringers in span 1 has split lengthwise with approximately one-quarter of the timber broken off.

Evaluation of Bride Conditions

Using the live load deflection measurements in span 1 and by observing deterioration, crushing, and distress of the stringers in spans 1 and 3, FRA has determined that TPW's Bridge 29.11 is in imminent danger of catastrophic failure under a train at any time.

Failure of the bridge under load could have very serious consequences. The bridge failure could cause the train to fall into the creek below, seriously injuring any railroad employees on the train and any other persons in the vicinity of Prairie Creek. A derailment could block the creek resulting in widespread flooding in the immediate area. Locomotive diesel fuel or hazardous materials in the train could cause severe environmental damage to Prairie Creek and the Iroquois River into which it eventually flows.

Finding and Order

FRA has concluded that any future railroad use of Bridge 29.11 on the Toledo, Peoria and Western Railway poses an imminent and unacceptable threat to public and employee safety. The past failure of the Toledo, Peoria and Western Railway to voluntarily remove the bridge from service and perform proper repairs persuades FRA that the agency cannot rely upon the cooperation of the railroad to protect public safety in relation to the Bridge 29.11. I find that these unsafe conditions create an emergency situation involving a hazard of death or injury to persons.

Accordingly, pursuant to the authority of 49 U.S.C. 20104 delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered that the Toledo, Peoria and Western Railway Company shall discontinue, and shall not permit, the operation of trains or any railroad on-track equipment over its Bridge 29.11 while this emergency Order remains in effect.

Relief

The Toledo, Peoria and Western Railway may obtain relief from this Emergency Order by providing the Federal Railroad Administrator with a report of inspection and evaluation of repairs, indicating to FRA's satisfaction that Bridge 29.11 has been acceptably repaired. The report shall be prepared and sealed by a registered professional engineer who is licensed to practice in the State of Illinois and is technically proficient in the field of timber railroad bridge engineering. The report shall state that the capacity of the entire bridge to carry safely railroad cars and locomotives has been restored. The configuration and weights of the loads for which the determination has been made shall be stated in the report, together with all calculations upon which that determination is based. The engineer's evaluation shall include a calculation of the capacity of every load-bearing member of each span in Bridge 29.11. The original of the engineer's report, bearing the embossed imprint of the seal of the engineer, shall be provided to the Regional Administrator of FRA's Region 4 before the report will be considered by FRA. Upon FRA's approval of the engineer's assessment of the bridge restoration, and following an inspection by FRA in which the agency finds the bridge properly repaired to safe condition, the Administrator will rescind this Emergency Order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $27,000, 49 U.S.C. 21301, 28 U.S.C. 2461, and *see* 69 FR 30591. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

The Emergency Order shall take effect at 12:01 a.m. (CST) on December 15, 2006, and apply to all operations of trains or railroad on-track equipment on Bridge 29.11 on or after that time. Notice of this Emergency Order will be provided by publishing it in the **Federal Register.** Copies of this Emergency Order will be sent by mail or facsimile prior to publication to Mr. Buford Hunter, General Manager, Toledo, Peoria and Western Railway, 1990 East Washington Street, East Peoria, Illinois, 61611; Mr. Joe Spirk, Chief Engineer-Central Business Unit of Rail America; and Mr. Scott Linn, Senior Vice President-Asset Management of RailAmerica, 5300 Broken Arrow Sound, NW., Boca Raton, Florida 33487; the Association of American Railroads; and the American Short Line and Regional Railroad Association.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC, on December 14, 2006.

Joseph H. Boardman,

Administrator.

[FR Doc. 06–9788 Filed 12–15–06; 2:56 pm]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance: Date and Location of Public Hearings

By public notice published on December 8, 2006 (71 FR 71237), The Federal Railroad Administration (FRA) announced the receipt of a petition from BNSF Railway and Norfolk Southern Railway, two Class I Railroads, for a waiver of compliance from certain provisions of Title 49 Code of Federal Regulations (CFR) Part 232 *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment*, to begin implementation of Electronically Controlled Pneumatic (ECP) brake technology. In the notice, FRA stated that the facts appear to warrant a public hearing. (The petition is identified as Docket FRA–2006–26435.)

A public hearing is hereby set for 1 p.m.–6 p.m. on Tuesday, January 16,

2006, at the Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005. Interested parties are invited to present oral statements at the hearing. The hearing will be informal and will be conducted by a representative designated by FRA in accordance with FRA's Rules of Practice (49 CFR 211.25). The hearing will be a non-adversarial proceeding; therefore, there will be no cross examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on December 14, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–21658 Filed 12–19–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34960]

The Chicago, Lake Shore and South Bend Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company

The Chicago, Lake Shore and South Bend Railway Company (CLS&SB), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to purchase and operate lines currently owned by Norfolk Southern Railway Company. The lines consist of approximately 3.2 miles of railroad between milepost UV 0.0 and milepost UV 2.8 and between milepost ZO 9.48 and milepost ZO 9.9, including any ownership interest in the spur leading to the University of Notre Dame near the City of South Bend, IN (City).[1]

CLS&SB certifies that its projected annual revenues as a result of the transaction will not exceed those that would quality it as a Class III rail carrier and will not exceed $5 million.

CLS&SB planned to consummate the transaction no sooner than 7 days after the filing date of this notice of exemption and commence operations once the necessary rehabilitation of the lines is complete.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34960, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 14, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21759 Filed 12–19–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34963]

James Riffin d/b/a The Raritan Valley Connecting Railroad—Acquisition and Operation Exemption—On Raritan Valley Connecting Track

James Riffin d/b/a The Raritan Valley Connecting Railroad (Mr. Riffin), a Class III rail carrier,[1] has filed an amended notice of exemption under 49 CFR 1150.41 to acquire and operate an approximately 1.25-mile segment of a rail line known as the Raritan Valley Connecting Track (Line Code 0326, Sub. No. 1038), extending from the Northerly sideline of the Lehigh Valley Line (at former Delaware & Bound Brook milepost 57.25), in Manville Borough, to the intersection with the southerly sideline of the former Raritan Valley Line, now New Jersey Transit's Raritan Valley Commuter Line (at former Delaware & Bound Brook milepost 58.50), in Bridgewater Township, all in Somerset County, NJ (the Line).[2] Mr. Riffin states that no agreement has been reached, but he proposes to acquire the Line and operating rights from its owner (the titleholder), which may be Consolidated Rail Corporation (Conrail), within 90 days of the December 6, 2006 filing of the notice.

Mr. Riffin certifies that the projected annual revenues as a result of this transaction will not exceed those that would qualify Mr. Riffin as a Class III carrier, and further certifies that Mr. Riffin's projected annual revenues will not exceed $5 million.

The earliest this transaction may be consummated is the January 5, 2006 effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction. Petitions for stay must be filed no later than December 29, 2006.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34963, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James Riffin, 1941 Greenspring Drive, Timonium, MD 21093.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 12, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21424 Filed 12–19–06; 8:45 am]

BILLING CODE 4915–01–P

[1] The 3.2 miles of line and spur at issue in this notice of exemption are also the subject of an adverse abandonment proceeding in *Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, IN*, STB Docket No. AB–290 (Sub-No. 286) (STB served and published at 71 FR 12933 on Dec. 11, 2006). The City, Sisters of the Holy Cross, Inc., and Brothers of Holy Cross, Inc., the applicants in STB Docket No. AB–290 (Sub-No. 286), on November 22, 2006, filed a petition to revoke, and a request to stay the effective date of, the notice of exemption at issue here. The Board issued a housekeeping stay in a decision served on November 22, 2006, to give interested persons an opportunity to submit additional information. The revocation request will be handled in a subsequent Board decision.

[1] In a decision served in *CSX Transportation, Inc.—Abandonment Exemption—In Allegany County, MD (In the Matter of an Offer of Financial Assistance)*, STB Docket No. AB–55 (Sub-No. 659X) (STB served Aug. 18, 2006), Mr. Riffin was substituted for WMS, LLC, as the purchaser of a rail line in Maryland.

[2] Mr. Riffin originally filed a notice of exemption on November 21, 2006. However, acknowledging that it was erroneously filed under 49 CFR 1150.31 (for a noncarrier), Mr. Riffin filed an amended notice under 49 CFR 1150.41 (for a Class III carrier) on December 1, 2006. He subsequently filed additional information on December 6, 2006. Accordingly, the filing date for this notice of exemption is December 6, 2006.

DEPARTMENT OF THE TREASURY

Submission to OMB for Approval and Request for Comment for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A and Schedules 1, 2, and 3, and Form 1040EZ, and All Attachments to These Forms

SUMMARY: The Department of Treasury has submitted the public information collections described in this notice to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be received on or before January 19, 2007 to be assured of consideration.

ADDRESSES: Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed below. Comments regarding this information collection should be addressed to the OMB reviewer listed below and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Number: 1545–0074.

Form Number: IRS Form 1040.

Type of Review: Extension.

Title: Form 1040, U.S. Individual Income Tax Return.

Description: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). *This notice requests comments on all forms used by individual taxpayers:* Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2, and 3; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice). With this notice, the IRS is again announcing significant changes to (1) the manner in which tax forms used by individual taxpayers will be approved under the PRA and (2) its method of estimating the paperwork burden imposed on individual taxpayers.

SUPPLEMENTARY INFORMATION:

Change in PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each ''collection of information'' that it reviews and approves for use by an agency. A single information collection may consist of one or more forms, recordkeeping requirements, and/or third-party disclosure requirements. Under the PRA and OMB regulations, agencies have the discretion to seek separate OMB approvals for individual forms, recordkeeping requirements, and third-party reporting requirements or to combine any number of forms, recordkeeping requirements, and/or third-party disclosure requirements (usually related in subject matter) under one OMB Control Number. Agency decisions on whether to group individual requirements under a single OMB Control Number or to disaggregate them and request separate OMB Control Numbers are based largely on considerations of administrative practicality.

The PRA also requires agencies to estimate the burden for each collection of information. Accordingly, each OMB Control Number has an associated burden estimate. The burden estimates for each control number are displayed in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) in OMB's database of approved information collections. If more than one form, recordkeeping requirement, and/or third-party disclosure requirement is approved under a single control number, then the burden estimate for that control number reflects the burden associated with all of the approved forms, recordkeeping requirements, and/or third-party disclosure requirements.

As described below under the heading ''New Burden Model,'' the IRS' new Individual Taxpayer Burden Model (ITBM) estimates of taxpayer burden are based on taxpayer characteristics and activities, taking into account, among other things, the forms and schedules generally used by those groups of individual taxpayers and the recordkeeping and other activities needed to complete those forms. The ITBM represents the first phase of a long-term effort to improve the ability of IRS to measure the burden imposed on various groups of taxpayers by the Federal tax system. While the new methodology provides a more accurate and comprehensive description of individual taxpayer burden, it does not estimate burden on a form-by-form basis, as has been done under the previous methodology. When the prior model was developed in the mid-1980s, almost all tax returns were prepared manually, either by the taxpayer or a paid provider. In this context, it was determined that estimating burden on a form-by-form basis was an appropriate methodology. Today, about 85 percent of all individual tax returns are prepared utilizing computer software (either by the taxpayer or a paid provider), and about 15 percent are prepared manually. In this environment, in which many taxpayers' activities are no longer as directly associated with particular forms, estimating burden on a form-by-form basis is not an appropriate measurement of taxpayer burden. The new model, which takes into account broader and more comprehensive taxpayer characteristics and activities, provides a much more accurate and useful estimate of taxpayer burden.

Currently, there are 195 forms used by individual taxpayers. These include Forms 1040, 1040A, 1040EZ, and their schedules and all the forms individual taxpayers attach to their tax returns (see the Appendix to this notice). For most of these forms, IRS has in the past obtained separate OMB approvals under unique OMB Control Numbers and separate burden estimates. Since the ITBM does not estimate burden on a form-by-form basis, IRS is no longer able to provide burden estimates for each tax form used by individuals. The ITBM estimates the aggregate burden imposed on individual taxpayers, based upon their tax-related characteristics and activities. IRS therefore will seek OMB approval of all 195 individual tax forms as a single ''collection of information.'' The aggregate burden of these tax forms will be accounted for under OMB Control Number 1545–0074, which is currently assigned to Form 1040 and its schedules. OMB Control Number 1545–0074 will be displayed on all individual tax forms and other information collections.

As a result of this change, burden estimates for individual taxpayers will now be displayed differently in PRA Notices on tax forms and other information collections, and in **Federal Register** notices. This new way of displaying burden is presented below under the heading ''PRA Submission to OMB.'' Since a number of forms used by individual taxpayers are also used by corporations, partnerships, and other kinds of taxpayers, there will be a transition period during which IRS will report different burden estimates for individual taxpayers and for other taxpayers using the same forms. For those forms used by both individual and other taxpayers, IRS will display two OMB Control Numbers (1545–0074 and the OMB Control Numbers currently assigned to these forms) and provide two burden estimates. The burden estimates for individual taxpayers will be reported and accounted for as described in this notice. The burden estimates for other users of these forms

will be determined under existing methodology based on form length and complexity.[1]

New Burden Model

Data from the new ITBM revises the estimates of the levels of burden experienced by individual taxpayers when complying with the Federal tax laws. It replaces the earlier burden measurement developed in the mid-1980s. Since that time, improved technology and modeling sophistication have enabled the IRS to improve the burden estimates. The new model provides taxpayers and the IRS with a more comprehensive understanding of the current levels of taxpayer burden. It reflects major changes over the past two decades in the way taxpayers prepare and file their returns. The new ITBM also represents a substantial step forward in the IRS' ability to assess likely impacts of administrative and legislative changes on individual taxpayers.

The ITBM's approach to measuring burden focuses on the characteristics and activities of individual taxpayers rather than the forms they use. Key determinants of taxpayer burden in the model are the way the taxpayer prepares the return (*e.g.* with software or paid preparer) and the taxpayer's activities, such as recordkeeping and tax planning. In contrast, the previous estimates primarily focused on the length and complexity of each tax form. The changes between the old and new burden estimates are due to the improved ability of the new methodology to measure burden and the expanded scope of what is measured. These changes create a one-time shift in the estimate of burden levels that reflects the better measurement of the new model. The differences in estimates between the models do not reflect any change in the actual burden experienced by taxpayers. Comparisons should not be made between these and the earlier published estimates, because the models measure burden in different ways.

Methodology

Burden is defined as the time and out-of-pocket costs incurred by taxpayers to comply with the Federal tax system. For the first time, the time expended and the out-of-pocket costs are estimated separately. The new methodology distinguishes among preparation methods, taxpayer activities, types of individual taxpayer, filing methods, and income levels. Indicators of complexity in tax laws as reflected in tax forms and instructions are incorporated in the model. The new model follows IRS' classification of taxpayer types: individual taxpayers are taxpayers who file any type of Form 1040. ''Self-Employed'' taxpayers are individual taxpayers who file a Form 1040 and a Schedule C, C–EZ, E, or F, or Form 2106. All other individual taxpayers using a Form 1040 are ''Wage and Investment'' taxpayers.

The taxpayer's choice of preparation method is identified as a major factor influencing burden levels. *The preparation methods are:*

- Self-prepared without software
- Self-prepared with software
- Used a paid tax preparer

The separate types of taxpayer activities measured in the model are:

- Recordkeeping
- Form completion
- Form submission (electronic and paper)
- Tax planning
- Use of services (IRS and paid professional)
- Gathering tax materials

Taxpayer Burden Estimates

Tables 1, 2, and 3 show the burden model estimates. In tax year 2003 the burden of all individual taxpayers filing Forms 1040, 1040A or 1040EZ averaged about 23 hours per return filed, or a total of more than 3 billion hours. Similarly, the average out-of-pocket taxpayer costs were estimated to be $179 per return filed or a total of $23.4 billion. Including associated forms and schedules, taxpayers filing Form 1040 had an average burden of about 30 hours, taxpayers filing Form 1040A averaged about 9 hours, and those filing 1040 EZ averaged about 7 hours.

The data shown are the best estimates from tax returns filed for 2003 currently available as of June 27, 2005. The estimates are subject to change as new forms and data become available. Estimates for combinations of major forms and schedules commonly used will be available and the most up-to-date estimates and supplementary information can be found on the IRS Web site: *http://www.irs.gov.*

PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2 and 3; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: Changes are being made to the forms and the method of burden computation.

Type of Review: Extension of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 130,200,000.

Total Estimated Time: 3.0 billion hours.

Estimated Time Per Respondent: 23.3 hours.

Total Estimated Out-of-Pocket Costs: $23.4 billion.

Estimated Out-of-Pocket Cost Per Respondent: $179.

TABLE 1.—TAXPAYER BURDEN FOR INDIVIDUAL TAXPAYERS WHO FILED FORM 1040, BY PREPARATION METHOD

Major form filed or type of taxpayer	Number of returns (millions)	Average burden							
		Average for all preparation methods		Self-prepared without tax software		Self-prepared with tax software		Prepared by paid professional	
		Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)
All Taxpayers Filing Form 1040, 1040A and 1040EZ	130.2	23.3	179	16.4	17	27.9	44	22.9	268
Major Form Filed:									

[1] As IRS continues to develop the new burden model, the new method of estimating burden will be expanded to cover other groups of taxpayers (corporations, partnerships, tax-exempt entities, etc.).

TABLE 1.—TAXPAYER BURDEN FOR INDIVIDUAL TAXPAYERS WHO FILED FORM 1040, BY PREPARATION METHOD—Continued

Major form filed or type of taxpayer	Number of returns (millions)	Average burden							
		Average for all preparation methods		Self-prepared without tax software		Self-prepared with tax software		Prepared by paid professional	
		Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)
Taxpayers Filing Form 1040 (and associated forms)	88.2	30.5	242	26.9	21	36.6	52	28.7	338
Taxpayers Filing Form 1040A (and associated forms)	23.3	9.1	62	10.8	29	11.5	44	7.4	82
Taxpayers Filing Form 1040EZ	18.7	7.2	29	7.0	1	10.1	9	5.5	60
Type of Taxpayer*:									
Wage and Investment	94.6	11.8	93	11.5	14	17.8	35	9.0	142
Self-Employed	35.6	53.9	410	48.5	31	68.4	81	53.9	522

Note: Detail may not add to total due to rounding.

*You are a ''Wage and Investment'' taxpayer (as defined by IRS) if you did not file a Schedule C, Schedule C–EZ, Schedule E, Schedule F, or Form 2106. If you filed a Schedule C, Schedule C–EZ, E, or F, or Form 2106, you are a ''Self-Employed'' taxpayer.

TABLE 2.—TAXPAYER BURDEN FOR TAXPAYERS WHO FILED FORM 1040, BY PREPARATION METHOD AND COMBINATION OF FORMS FILED

Type of taxpayer* and common combinations of forms filed	Average burden							
	Average for all preparation methods		Self-prepared without tax software		Self-prepared with tax software		Prepared by paid professional	
	Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)
Common Filing Combinations of Wage & Investment Taxpayers								
Wage and Investment Taxpayers	11.8	93	11.5	14	17.8	35	9.0	142
Form 1040 and other forms and schedules, but not Schedules A and D	9.2	88	12.2	17	15.8	34	6.6	118
Form 1040 and Schedule A and other forms and schedules, but not Schedule D	16.3	126	19.2	17	22.6	41	11.9	198
Form 1040 and Schedule D and other forms and schedules, but not Schedule A	17.6	159	22.5	14	27.3	48	12.9	223
Form 1040 and Schedules A and D and other forms and schedules	24.6	239	32.8	13	35.4	44	18.1	365
Common Filing Combinations of Self-Employed Taxpayers								
Self-Employed Taxpayers	53.9	410	48.5	31	68.4	81	53.9	522
Form 1040 and Schedule C and other forms and schedules, but not Schedules E or F or Form 2106	59.4	245	51.4	24	74.6	63	56.1	323
Form 1040 and Schedule E and other forms and schedules, but not Schedules C or F or Form 2106	44.7	591	37.5	43	57.7	100	42.8	717
Form 1040 and Schedule F and other forms and schedules, but not Schedules C or E or Form 2106	34.8	238	38.1	37	49.7	81	34.8	238
Form 1040 and Form 2106 and other forms and schedules but not Schedules C, E, or F	55.4	242	42.0	32	62.5	80	55.8	283

TABLE 2.—TAXPAYER BURDEN FOR TAXPAYERS WHO FILED FORM 1040, BY PREPARATION METHOD AND COMBINATION OF FORMS FILED—Continued

Type of taxpayer* and common combinations of forms filed	Average burden							
	Average for all preparation methods		Self-prepared without tax software		Self-prepared with tax software		Prepared by paid professional	
	Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)
Form 1040 and forms and schedules including more than one of the SE forms (Schedules C, E, or F or Form 2106)	69.4	618	72.0	40	88.3	99	65.7	746

*You are a ''Wage and Investment'' taxpayer (as defined by IRS) if you did not file a Schedule C, Schedule C–EZ, Schedule E, Schedule F, or Form 2106. If you filed a Schedule C, Schedule C–EZ, E, or F, or Form 2106, you are a ''Self-Employed'' taxpayer.

TABLE 3.—TAXPAYER BURDEN FOR TAXPAYERS WHO FILED FORM 1040, BY ACTIVITY

Form or schedule	Percent of returns filed (percent)	Average time burden of taxpayer activities (hours per return)					Average Costs per Return (dollars)
		Total Time	Record-keeping	Tax planning	Form completion	All other activities	
All Taxpayers	100	23.3	14.1	3.2	3.2	2.8	179
Form 1040	68	30.5	19.1	4.2	3.8	3.5	242
Form 1040A	18	9.1	4.3	1.1	1.9	1.8	63
Form 1040EZ	14	7.2	2.5	1.5	2.1	1.2	29
Type of Taxpayer*	100						
Wage and Investment	73	11.8	5.0	2.3	2.7	1.8	93
Self-Employed	27	53.9	38.1	5.8	4.4	1.2	410

Note: Detail may not add to total due to rounding.
*You are a ''Wage and Investment'' taxpayer (as defined by IRS) if you did not file a Schedule C, Schedule C–EZ, Schedule E, Schedule F, or Form 2106. If you filed a Schedule C, Schedule C–EZ, E, or F, or Form 2106, you are a ''Self-Employed taxpayer.''

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 should be submitted to OMB and the Treasury Department as indicated. 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. All comments will become a matter of public record.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Dated: December 14, 2006.

Robert Dahl,

Treasury PRA Clearance Officer.

APPENDIX

Form	Title
1040	U.S. Individual Income Tax Return.
1040 A	U.S. Individual Income Tax Return.
1040 EZ	Income Tax Return for Single and Joint Filers With No Dependents.
1040X	Amended U.S. Individual Income Tax Return.
1040NR	U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ	U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
926	Return by a U.S.Transferor of Property to a Foreign Corporation.
970	Application To Use LIFO Inventory Method.
972	Consent of Shareholder To Include Specific Amount in Gross Income.
1128	Application to Adopt, Change, or Retain a Tax Year.
2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
3115	Application for Change in Accounting Method.
3468	Investment Credit.

APPENDIX—Continued

Form	Title
3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
3800	General Business Credit.
4255	Recapture of Investment Credit.
4562	Depreciation and Amortization.
4797	Sales of Business Property.
5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5713	International Boycott Report.
5884	Work Opportunity Credit.
6478	Credit for Alcohol Used as Fuel.
6765	Credit for Increasing Research Activities.
8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
8271	Investor Reporting of Tax Shelter Registration Number.
8586	Low-Income Housing Credit.
8594	Asset Acquisition Statement.
8609 SCH A	Annual Statement.
8611	Recapture of Low-Income Housing Credit.
8621	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8820	Orphan Drug Credit.
8826	Disabled Access Credit.
8830	Enhanced Oil Recovery Credit.
8835	Renewable Electricity and Refined Coal Production Credit.
8844	Empowerment Zone and Renewal Community Employment Credit.
8845	Indian Employment Credit.
8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8847	Credit for Contributions to Selected Community Development Corporations.
8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8860	Qualified Zone Academy Bond Credit.
8861	Welfare-to-Work Credit.
8864	Biodiesel Fuels Credit.
8865	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8873	Extraterritorial Income Exclusion.
8874	New Markets Credit.
8881	Credit for Small Employer Pension Plan Startup Costs.
8882	Credit for Employer-Provided Childcare Facilities and Services.
8886	Reportable Transaction Disclosure Statement.
8896	Low Sulfur Diesel Fuel Production Credit.
8900	Qualified Railroad Track Maintenance Credit.
8903	Domestic Production Activities Deduction.
8907	Nonconventional Source Fuel Credit.
8913	Credit for Federal Telephone Excise Tax Paid.
T (Timber)	Forest Activities Schedules.
5471 SCH J	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
5471 SCH M	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH N	Return of Officers, Directors, and 10%-or-More Shareholders of a Foreign Person Holding Company.
5471 SCH O	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5713 SCH A	International Boycott Factor (Section 999(c)(1)).
5713 SCH B	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	Tax Effect of the International Boycott Provisions.
8621 A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
8693	Low-Income Housing Credit Disposition Bond.
8832	Entity Classification Election.
8838	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8858 SCH M	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
8865 SCH K–1	Partner's Share of Income, Credits, Deductions, etc.

APPENDIX—Continued

Form	Title
8865 SCH O	Transfer of Property to a Foreign Partnership.
8865 SCH P	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
1040 SCH A	Itemized Deductions.
1040 SCH B	Interest and Ordinary Dividends.
1040 SCH C	Profit or Loss From Business.
1040 SCH C–EZ	Net Profit From Business.
1040 SCH D	Capital Gains and Losses.
1040 SCH D–1	Continuation Sheet for Schedule D.
1040 SCH E	Supplemental Income and Loss.
1040 SCH EIC	Earned Income Credit.
1040 SCH F	Profit or Loss From Farming.
1040 SCH H	Household Employment Taxes.
1040 SCH J	Income Averaging for Farmers and Fishermen.
1040 SCH R	Credit for the Elderly or the Disabled.
1040 SCH SE	Self-Employment Tax.
1116	Foreign Tax Credit.
1310	Statement of Person Claiming Refund Due a Deceased Taxpayer.
2106 EZ	Unreimbursed Employee Business Expenses.
2106	Employee Business Expenses.
2120	Multiple Support Declaration.
2210 F	Underpayment of Estimated Tax by Farmers and Fishermen.
2210	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
2350	Application for Extension of Time To File U.S. Income Tax Return.
2350 SP	Solicitud de Prorroga para Presentar la Declaracion del Impuesto sobre el Ingreso de los Estados Unidos.
2441	Child and Dependent Care Expenses.
2555 EZ	Foreign Earned Income Exclusion.
2555	Foreign Earned Income.
3903	Moving Expenses.
4137	Social Security and Medicare Tax on Unreported Tip Income.
4563	Exclusion of Income for Bona Fide Residents of American Samoa.
4684	Casualties and Thefts.
4835	Farm Rental Income and Expenses.
4952	Investment Interest Expense Deduction.
4972	Tax on Lump-Sum Distributions.
5074	Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5329	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
6198	At-Risk Limitations.
6251	Alternative Minimum Tax—Individuals.
6252	Installment Sale Income.
6781	Gains and Losses From Section 1256 Contracts and Straddles.
8275 R	Regulation Disclosure Statement.
8275	Disclosure Statement.
8283	Noncash Charitable Contributions.
8332	Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379	Injured Spouse Claim and Allocation.
8396	Mortgage Interest Credit.
8582 CR	Passive Activity Credit Limitations.
8582	Passive Activity Loss Limitations.
8606	Nondeductible IRAs.
8615	Tax for Children Under Age 14 With Investment Income of More Than $1,600.
8689	Allocation of Individual Income Tax to the Virgin Islands.
8801	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
8812	Additional Child Tax Credit.
8814	Parents' Election to Report Child's Interest and Dividends.
8815	Exclusion of Interest from Series EE and I U.S. Savings Bonds Issued After 1989.
8824	Like-Kind Exchanges.
8828	Recapture of Federal Mortgage Subsidy.
8829	Expenses for Business Use of Your Home.
8834	Qualified Electric Vehicle Credit.
8836	Qualifying Children Residency Statement.
8839	Qualified Adoption Expenses.
8840	Closer Connection Exception Statement for Aliens.
8843	Statement for Exempt Individuals and Individuals With a Medical Condition.
8853	Archer MSAs and Long-Term Care Insurance Contracts.

APPENDIX—Continued

Form	Title
8854	Initial and Annual Expatriation Information Statement.
8859	District of Columbia First-Time Homebuyer Credit.
8862	Information To Claim Earned Income Credit After Disallowance.
8863	Education Credits.
8880	Credit for Qualified Retirement Savings Contributions.
8885	Health Coverage Tax Credit.
8888	Direct Deposit of Refund.
8889	Health Savings Accounts (HSAs).
8891	U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.
8898	Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
673	Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusion(s).
1000	Ownership Certificate.
1040 A–SCH 1	Interest and Ordinary Dividends for Form 1040A Filers..
1040 A–SCH 2	Child and Dependent Care Expenses for Form 1040A Filers.
1040 A–SCH 3	Credit for the Elderly or the Disabled+F66 for Form 1040A Filers.
1040 ES–E	Estimated Tax for Individuals.
1040 ES–OCR	Estimated Tax for Individuals (Optical Character Recognition Without Form 1040V).
1040 ES–OCR–V	Payment Voucher.
1040 ES–OTC	Estimated Tax for Individuals.
1040 ES/VOCR	Estimated Tax for Individuals (Optical Character Recognition With Form 1040V).
1040 V	Payment Voucher.
1040 V–OCR	Payment Voucher.
1040 V–OCR–ES	Payment Voucher.
1045	Application for Tentative Refund.
4070 A	Employee's Daily Record of Tips.
4070	Employee's Report of Tips to Employer.
4361	Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4868	Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4868 SP	Solicitud de Prorroga para Presentar la Declaracion del Impuesto sobre el Ingreso Personal de los Estados Unidos.
5213	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
8453 OL	U.S. Individual Income Tax Declaration for an IRS e-file Online Return.
8453 OL SP	Declaracion del Impuesto sobre el Ingreso Personal de los Estados Unidos por Medio de la Presentacion Electronica del IRS (e-file) En-Linea.
8453	U.S. Individual Income Tax Declaration for an IRS e-file Return.
8453 SP	Declaracion del Impuesto sobre el Ingreso Personal de los Estados Unidos por Medio de la Presentacion Electronica del IRS e-file.
8818	Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8822	Change of Address.
8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
8836 SCH A	Third Party Affidavit.
8836 SCH B	Third Party Affidavit.
8878	IRS e-file Signature Authorization for Application for Extension of Time to File.
8879	IRS e-file Signature Authorization.
8901	Information on Qualifying Children Who Are Not Dependents (For Child Tax Credit Only).
9465	Installment Agreement Request.
W–7 A	Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W–7	Application for IRS Individual Taxpayer Identification Number.
982	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
4136	Credit for Federal Tax Paid On Fuels.
4970	Tax on Accumulation Distribution of Trusts.
2848	Power of Attorney and Declaration of Representative.
4029	Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4852	Substitute for Form W–2 or Form 1099–R.
5754	Statement by Person(s) Receiving Gambling Winnings.

APPENDIX—Continued

Form	Title
8821	Tax Information Authorization.
8836 SP	Comprobante de Residencia para los Hijos(as) Calificados(as).
8836 SP–SCH A	Declaracion Jurada del Tercero.
8836 SP–SCH B	Declaracion Jurada del Tercero.
8878 SP	Autorizacion de firma para presentar por medio del IRS e-file—Solicitud de prorroga del plazo.
8879 SP	Autorizacion de firma para presentar por medio del IRS e-file.
9465 SP	Peticion para un Plan de Pagos a Plazos.
SS–4	Application for Employer Identification Number.
SS–8	Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
W–4P	Withholding Certificate for Pension or Annuity Payments.
W–4S	Request for Federal Income Tax Withholding From Sick Pay.
W–4 SP	Certificado de descuentos del(la) empleado(a) para la retencion.
W–4 V	Voluntary Withholding Request.
W–4	Employee's Withholding Allowance Certificate.
W–5 SP	Certificado del pago por adelantado del Credito por Ingreso del Trabajo.
W–5	Earned Income Credit Advance Payment Certificate.
W–7 SP	Solicitud de Numero de Identicacion Personal del Contribuyente el Servicio de Impuestos Internos.

[FR Doc. E6–21709 Filed 12–19–06; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 14, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 19, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1711.

Type of Review: Extension.

Title: REG–116050–99 (final) Stock Transfer Rules: Carryover of Earnings and Taxes.

Description: This document contains final regulations addressing the carry over of certain attributes, such as earnings and profits and foreign income tax accounts, when two corporations combine in a corporate reorganization or liquidation that is described in both section 367(b) and section 381 of the Internal Revenue Code.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 1,800 hours.

OMB Number: 1545–2024.

Type of Review: Extension.

Title: Limited Payability Claim Against the United States For Proceeds of the Internal Revenue Refund Check.

Description: This collection is used for taxpayers completing a claim against the United States for the proceeds of an Internal Revenue refund check.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 4,000 hours.

OMB Number: 1545–1096.

Title: CO–46–94 (Final) Losses on Small Business Stock.

Type of Review: Extension.

Description: Records are required by the Service to verify that the taxpayer is entitled to a section 1244 loss. The records will be used to determine whether the stock qualifies as section 1244 stock.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 2,000 hours.

OMB Number: 1545–0794.

Title: Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time for Filing Information Returns of Owners, Officers and Directors of Foreign Corporations.

Type of Review: Extension.

Description: Section 6046 requires information returns with respect to certain foreign corporations and the regulations provide the date by which these returns must be filed.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1697.

Title: Revenue Procedure 2000–35 Section 1445 Withholding Certificates.

Type of Review: Extension.

Description: Revenue Procedure 2000–35 provides guidance concerning applications for withholding certificates under Code section 1445.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 60,000 hours.

OMB Number: 1545–2027.

Title: Americans with Disabilities Act (ADA) Accommodations Request Packet.

Type of Review: Extension.

Description: It is necessary to collect this information so that ADA applicant may receive reasonable accommodation, as needed, to take the Special Enrollment Examination. We are utilizing the vendor's survey which complies with the ADA and the Rehabilitation Act of 1978.

Respondents: Individuals or households.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1545–1551.

Title: Revenue Procedure 97–36, Revenue Procedure 97–38, Revenue Procedure 97–39, and Revenue Procedure 2002–9, Changes in Methods of Accounting.

Type of Review: Extension.

Description: The information collected in the four revenue procedures

is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of the change.

Respondents: Businesses and other for-profit institutions, farms, and not-for-profit institutions.

Estimated Total Burden Hours: 222,454 hours.

OMB Number: 1545–0790.

Title: Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

Type of Review: Extension.

Form: 8082.

Description: IRC sections 6222 and 6227 require partners to notify IRS by filing Form 8082 when they (1) treat partnership items inconsistent with the partnership's treatment (6222), and (2) change previously reported partnership items (6227). Sections 6244 and 860F extend this requirement to shareholders of S corporations and residuals of REMICs. Also, sections 6241 and 6034A(c) extend this requirement to partners in electing large partnerships and beneficiaries of estates and trusts.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 51,024 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–21720 Filed 12–19–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Literacy and Education Commission

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Financial Literacy and Education Commission, established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

DATES: The tenth meeting of the Financial Literacy and Education Commission will be held on January 30, 2007, beginning at 10 a.m.

ADDRESSES: The Financial Literacy and Education Commission meeting will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC. To be admitted to the Treasury building, attendees must RSVP by providing his or her name, organization, phone number, date of birth, Social Security number, and country of citizenship to the Department of the Treasury by e-mail at: *FLECrsvp@do.treas.gov,* or by telephone at: (202) 622–1783 (not a toll-free number) not later than 5 p.m. on Tuesday, January 23, 2006.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Tom Kurek by e-mail at: *thomas.kurek@do.treas.gov* or by telephone at (202) 622–5770 (not a toll free number). Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at: *http://www.treas.gov/financialeducation.*

SUPPLEMENTARY INFORMATION: The Financial Literacy and Education Improvement Act, which is Title V of the Fair and Accurate Credit Transactions Act of 2003 (the ''FACT Act'') (Pub. L. 108–159), established the Financial Literacy and Education Commission (the ''Commission'') to improve financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the head of the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Federal Reserve; the Federal Deposit Insurance Corporation; the National Credit Union Administration; the Securities and Exchange Commission; the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs; the Federal Trade Commission; the General Services Administration; the Small Business Administration; the Social Security Administration; the Commodity Futures Trading Commission; and the Office of Personnel Management. The Commission is required to hold meetings that are open to the public every four months, with its first meeting occurring within 60 days of the enactment of the FACT Act. The FACT Act was enacted on December 4, 2003.

The tenth meeting of the Commission, which will be open to the public, will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC. The room will accommodate 80 members of the public. Seating is available on a first-come basis. Participation in the discussion at the meeting will be limited to Commission members, their staffs, and special guest presenters.

Dated: December 13, 2006.

Dan Iannicola, Jr.,

Deputy Assistant Secretary for Financial Education.

[FR Doc. E6–21712 Filed 12–19–06; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—'34 Act Disclosures

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before February 20, 2007.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Gary Jeffers, Senior Attorney, Business Transactions Division, (202) 906–6457, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: '34 Act Disclosures.

OMB Number: 1550–0019.

Form Number: Schedules 13D, 13G, 13e–3, 14A, 14C, 14D–1, and TO; SEC Forms 3, 4, 5, 10, 10–SB, 10–K, 10–KSB, 8–K, 8–A, 12b–25, 10–Q, 10–QSB, 15, and annual report.

Regulation requirement: 12 CFR Part 563d.

Description: OTS is responsible for the securities filings for thrift institutions. These filings provide operational data to stockholders and investors that allows them to evaluate their investments and make informed decisions about the possible purchase or sale of the securities. OTS reviews these forms to ensure that the information is complete and complies with regulatory requirements, and that the thrift institution is complying with Securities and Exchange Commission (SEC) and OTS regulations.

Type of Review: Renewal.

Affected Public: Directors, officers, and principal shareholders of insured financial institutions (insiders); Savings associations.

Estimated Number of Respondents: 12.

Estimated Number of Responses: 256.

Estimated Frequency of Response: On occasion; quarterly; annually.

Estimated Total Burden: 24,402 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: December 14, 2006.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E6–21731 Filed 12–19–06; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 71, No. 244

Wednesday, December 20, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Air Force

[USAF–2006–0016]

Privacy Act of 1974; System of Records

Correction

In notice document 06–9621 beginning on page 71535 in the issue of Monday, December 11, 2006, make the following correction:

On page 71536, in the first column, after the heading ''**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**'', the heading ''**F036 AETF I**'' should read ''**F036 AETC I**''.

[FR Doc. C6–9621 Filed 12–19–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 20, 2006

Part II

Millennium Challenge Corporation

Notice of Entering Into a Compact With the Government of the Republic of El Salvador; Notice

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–21]

Notice of Entering Into a Compact With the Government of the Republic of El Salvador

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of El Salvador. Representatives of the United States Government and the Government of the Republic of El Salvador executed the Compact documents on November 29, 2006.

Dated: December 8, 2006.

William G. Anderson Jr.,

Vice President & General Counsel (Acting), Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Government of the Republic of El Salvador

I. Introduction

In 1992, El Salvador entered into the peace accord that ended a decade of civil conflict. The conflict cost over 70,000 lives and left nearly two-thirds of the country's population in poverty. During the war, human capital formation lagged, public investment was deferred, and deterioration of the natural resource base accelerated. The northern zone of El Salvador (the ''Northern Zone'') fared the worst; its mountainous territory served as a primary staging ground for the conflict, thereby increasing violence and instability in the area and causing an exodus of large numbers of the region's inhabitants. Despite the significant national economic growth that followed the peace accord, progress has stagnated in recent years and the poverty rate in the Northern Zone (53 percent) remains higher than the national average (34 percent). Today, approximately 450,000 of the country's 2.33 million poor people reside in the Northern Zone.

Overcoming these obstacles and unifying the Northern Zone with the rest of the country have become national priorities. The Northern Zone serves as a primary source of water, energy, biodiversity and other key resources for El Salvador and neighboring countries in Central America. Halting, and indeed reversing, the deterioration of these resources, and ensuring more sustainable approaches to economic development, comprise strategic goals. The population of the Northern Zone requires a comprehensive development program to enable it to fully participate in El Salvador's growth, the benefits of regional integration, and the economic opportunities brought about by the recently signed Central America-Dominican Republic-United States Free Trade Agreement.

The five-year, $460.94 million Compact provides an historic opportunity to fulfill these goals and transform El Salvador's economic development.

II. Program Overview, Budget, and Impact

The program supported by the Compact (the ''Program'') is comprised of three strategic and interdependent projects: (1) Human development; (2) productive development; and (3) connectivity.

MULTI-YEAR FINANCIAL PLAN SUMMARY

Component	(USD millions)					
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Human Development Project	$5.62	$23.18	$24.04	$21.02	$21.22	$95.07
Productive Development Project	13.55	18.28	20.76	22.01	12.87	87.47
Connectivity Project	16.44	82.79	111.58	18.80	3.95	233.56
Accountability	2.85	5.65	6.67	4.27	4.82	24.26
Program Administration	4.35	4.07	4.18	4.03	3.95	20.59
Total estimated MCC Contribution	42.82	133.97	167.22	70.12	46.81	460.94

The Program is projected to directly alleviate the poverty of over 150,000 Salvadorans and enhance the livelihoods and welfare of over 850,000 people in the target area. It is expected that as a result of the Program, incomes in the region will increase by 20 percent over the five-year term of the Program, and by 30 percent within ten years of the start of the Program.[1] Increased investment, trade, and productivity in the Northern Zone are expected to have spillover benefits for the country as a whole, as well as for the entire Central American region.

A. Human Development Project

This project is based on the foundations and ongoing work achieved in two existing Government of El Salvador (''GOES'') programs—the Solidarity Network and the National Education Plan 2021. It is divided into two broad activities:

- *Education and Training* will support both formal and non-formal technical training programs, secondary and post-secondary technical and vocational education with related infrastructure and equipment; over 27,000 people will benefit directly; and
- *Community Development* will provide improved access to potable water systems for 90,000 people and improved sanitation services for over 50,000. Electricity coverage in the Northern Zone will increase from 70 percent to no less than 97 percent, benefiting 235,000 individuals. Through construction and improvement of community infrastructure (e.g., tertiary roads, improved drainage, small bridges) over 130,000 people will have greater access to markets, employment, and facilities supporting health and education.

[1] Without the Program, income in the Northern Zone is expected to increase by only 2 percent over the period of the Program and by 4 percent within 10 years of the start of the Program.

B. Productive Development Project

This project includes provision of technical assistance, training, and financial services to farmers to help them shift from basic grains to higher value crops and to micro, small and medium businesses to make efficient, productivity improving investments. It is expected to lead to increases in net income for 55,000 beneficiaries, and is organized into three activities:

- *Production and Business Services* will provide technical assistance to farmers and business development services to micro, small and medium enterprises, all on a cost-sharing basis;
- *Investment Support* will provide investment capital on market terms to competitively selected applicants for commercially-viable activities by the private sector; and
- *Financial Services* will provide credit guarantees and technical assistance to financial institutions to generate increased lending activity by banks and non-bank financial institutions to farmers and rural enterprises. In addition, crop insurance will help mitigate risks for small producers in the Northern Zone.

C. Connectivity Project

This project addresses the issue of the Northern Zone's physical isolation with two activities:

- *The Northern Transnational Highway* includes the design, construction, and rehabilitation of a 289-kilometer two-lane secondary road, forming a transportation corridor from Guatemala to Honduras across the Northern Zone of El Salvador. More than 80 percent of the highway span involves rehabilitation; new roads are expected to comprise approximately 50 kilometers; and
- *The Connecting Road Network* includes paving and improvement of 240 kilometers of unpaved roads that will enable increased access to markets, health, and education services, and integrate the Northern Zone with national and regional highway systems.

Increased connectivity is expected to lead to new economic opportunities for rural households, lower transportation costs, and decrease travel times to markets and social service delivery points for upwards of 600,000 beneficiaries.

III. Program Management

Through an act of its legislature, the GOES will create Fondo del Milenio (''FOMILENIO'') to serve as the accountable entity for the Program. FOMILENIO will be governed by an independent board of directors (the ''Board'') which will make strategic decisions, provide oversight, and ultimately be responsible for the results of the Program. The Board will be comprised of seven voting members—four members designated by GOES, one private-sector member, and two representatives of nongovernmental organizations. The Board also will benefit from the participation of an advisory council, consisting of members of the National Development Commission and other stakeholders. An executive director will manage the day-to-day activities of FOMILENIO and will be supported by key officers, technical staff, and administrative personnel.

FOMILENIO will engage line ministries, other public agencies, a second-tier development bank, and contractors/consultants for direct execution of the Program activities. However, as the accountable entity, FOMILENIO will remain responsible for the successful implementation of the Program. The financial management unit within FOMILENIO and the Ministry of Finance will share the financial management responsibilities for the Program. FOMILENIO will utilize outside procurement and fiscal oversight agents. As a governmental entity, FOMILENIO will be subject to GOES audit requirements as well as audits required by the Compact.

IV. Other Highlights

A. Consultative Process

The National Development Commission has led a public dialogue on a new vision for El Salvador's development. As a result of this dialogue, the National Development Commission produced a shared national development strategy, known as the Plan of the Nation, setting forth a vision for development of each of the five regions of El Salvador, including the Northern Zone. In response to the Plan of the Nation, and based on local, regional, and national level consultations, GOES created a plan for developing the Northern Zone (the ''Northern Zone Investment Plan'').

To develop their proposal for Millennium Challenge Account (''MCA'') assistance, GOES refined the Northern Zone Investment Plan based on input received in a series of consultations with various stakeholders and interested parties. Consultations included local mayors, private-sector representatives, academic experts, international donors, multilateral development organizations, sector specialists, and the general public. In total, GOES held more than 50 formal workshops and informal discussions with over 2,200 Salvadorans. GOES, through FOMILENIO, plans to continue engaging civil society, local government, and other key constituencies in oversight and guidance through Program implementation. It will do this via private sector and civil society representation on the Board, and through ongoing participation by the National Development Commission, local mayoral commission, government representatives, and other stakeholders on FOMILENIO's Advisory Council.

B. GOES Commitment and Contribution to the Program

GOES has demonstrated substantial commitment to the Compact development process since first becoming eligible for MCA assistance in November 2005. Under the guidance of a high-level oversight commission, and with the leadership of the executive director of the MCA-El Salvador team, GOES presented a comprehensive proposal just over five months after becoming eligible. The President and other high-level officials have been directly engaged in developing the Program, providing the political leadership necessary for its success. Recent progress on policy reform, and ongoing efforts by GOES to strengthen rule of law, administration of justice, and other relevant areas, contributed to El Salvador being re-selected as an MCA-eligible country in November of 2006.

Pursuant to Section 609(b)(2) of MCC's legislation applicable to a lower middle income country receiving Compact funds, GOES will make an appropriate contribution, relative to its national budget and taking into account prevailing economic conditions, towards meeting the objectives of the Compact. The GOES contribution will be in addition to the government's spending allocated towards such objectives in the country's budget for the year immediately preceding the establishment of the Compact. GOES expects to make a qualifying contribution to the Northern Zone Investment Plan of approximately $327 million over the five-year term of the Compact. In addition, GOES invested over $1.7 million in proposal preparation and has committed another approximately $9 million to fund up-front feasibility, design and environmental impact studies related to the Connectivity Project.

C. Sustainability

MCC is requiring assurances from GOES that it will provide the staffing, equipment and other recurrent costs of new (and, in some cases, existing)

facilities and infrastructure investments necessary for the sustainability of the Program. The education and training activity will include strong private-sector involvement and will engender local and civil society ownership. As part of the technical assistance activity, an assessment will be made of alternative revenue sources needed to cover recurring costs. These elements will support more sustainable impact of this activity.

Selection criteria for the water and sanitation and community infrastructure activities under the Human Development Project will stipulate a minimum level of community contribution to investment in and maintenance of new infrastructure. Municipalities and/or community-level entities will be responsible for system operation and maintenance. System designs will reflect lowest cost alternatives in order to reflect users' ability to pay tariffs for operation and maintenance costs. For the rural electrification and water and sanitation activities, user fees that correspond with system operation and maintenance needs will be applied.

The Productive Development Project will provide support to encourage alliances, joint ventures, and other collaborations between more established enterprises and smaller/disadvantaged organizations and individuals. In addition to technical assistance provided to micro, small, and medium sized enterprises, support will be provided to financial institutions to enable them to better serve new clients. These activities are expected to accelerate start-up of productive activities, and improve prospects for success and sustainability.

Sustainability of MCC investments in transportation infrastructure is contingent upon proper and effective road maintenance. El Salvador possesses substantial road maintenance capabilities in the Fondo de Conservación Vial. Disbursement of MCC funding for the Connectivity Project will depend on the satisfaction of conditions related to road maintenance of all roads within the Connectivity Project for the life of such roads.

D. Environment and Social Impacts

Environmental and social sustainability of the Program will be enhanced through oversight, ongoing public consultation and institutional capacity building. A strategic environmental assessment funded by the World Bank will be performed in the Northern Zone to address the project components and the need to strengthen land use plans. To address the lack of institutional capacity for effective monitoring and oversight, GOES will commit to increasing environmental staff in the implementing and regulatory entities and creating an inter-departmental task force, focused on the Northern Zone investments, in the Ministry of Environment and Natural Resources. GOES will also strengthen the environmental management system to help in the enforcement of land use plans and participation of Salvadoran communities in the sustainable management of natural resources. MCC is providing funding for training in environmental management to further improve the institutional capacity.

The Connectivity Project is classified as Category A under MCC's Environmental Guidelines. An environmental impact assessment, environmental management plans, resettlement action plans, and HIV/AIDS awareness plans will be undertaken and funded by GOES. GOES and MCC also have conducted multiple consultations with non-governmental organizations in El Salvador and in the U.S. to review concerns and ensure they are adequately addressed in advance of implementation.

As part of the Human Development Project, classified as Category B under MCC's Environmental Guidelines, the education and training activity will require a gender assessment to address issues of access and meaningful participation. The community development activity will require selection criteria for provision of community services that take into account environmental sensitivity and social impact considerations and site-specific environmental analysis as needed.

The Productive Development Project, classified as Category D under MCC's Environmental Guidelines, will adhere to guidelines contained in an operations manual that defines environmental and social/gender requirements. Specifically, potentially adverse environmental impacts may result from new or expanded activities supported by the Project. To address these and other potential impacts, technical assistance will involve the dissemination of environmental sustainability principles, and selection criteria for eligible proposals will include environmental sensitivity and social impact considerations.

E. Donor, Multilateral, and Interagency Coordination

The Program was developed in collaboration with a wide variety of donors and multilateral finance institutions. Several Program components will build upon activities pioneered by other donors (such as the Inter-American Development Bank's rural roads program, and the U.S. Agency for International Development's water and sanitation and rural productivity projects). MCC worked with the European Union and the Japanese International Cooperation Agency as it reviewed proposed transportation infrastructure activities. MCC also worked closely with the World Bank to ensure proper coordination on the strategic environmental assessment, and on matters related to land tenure, land administration, and protected areas management.

To further advance understanding of the proposed Program, MCC held numerous meetings with representatives from various U.S. Government agencies. MCC looked primarily to USAID and the U.S. Department of State for information on the development context in El Salvador. For insight into the integrity of GOES financial management systems, MCC received detailed reviews and recommendations from USAID's Regional Inspector General's office in El Salvador. On specific technical issues, MCC met with specialists from the U.S. Department of Agriculture, Federal Highway Administration, Inter-American Foundation, U.S. Department of Justice, and the Army Corps of Engineers. MCC also held meetings with key representatives from the U.S. Commercial Service, U.S. Trade Representative, U.S. Trade and Development Agency, Export-Import Bank of the United States, and the Overseas Private Investment Corporation. These sessions provided useful context to the Compact development process and alerted MCC staff to potential challenges and opportunities for positive collaboration.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of the Republic of El Salvador

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Millennium Challenge Compact

This Millennium Challenge Compact (the ''Compact'') is made between the United States of America, acting through the Millennium Challenge Corporation, a United States Government corporation (''MCC'') and the Government of the Republic of El Salvador (the ''Government'') (referred to herein individually as a ''Party'' and collectively, the ''Parties''). A compendium of capitalized terms defined herein is included in Exhibit A attached hereto.

Recitals

Whereas, MCC, acting through its Board of Directors, has selected the Republic of El Salvador as eligible to present to MCC a proposal for the use of Millennium Challenge Account (''MCA'') assistance to help facilitate poverty reduction through economic growth in El Salvador;

Whereas, the Government has carried out a consultative process with the country's private sector and civil society to outline the country's priorities for the use of MCA assistance and developed a proposal, which was submitted to MCC in May 2006 (the ''Proposal'');

Whereas, the Proposal focused on interrelated objectives of supporting knowledge and skills development, expanding community infrastructure, developing productive potential, and improving connectivity in the northern zone of El Salvador (the ''Northern Zone'') as important national priorities to foster national integration and sustainable economic and social development;

Whereas, MCC has evaluated the Proposal and related documents and determined that the Proposal is consistent with core MCA principles and includes a coherent structure of integrated activities that will advance the progress of El Salvador towards achieving lasting economic growth and poverty reduction;

Whereas, based on MCC's evaluation of the Proposal and related documents and subsequent discussions and negotiations between the Parties, the Government and MCC determined to enter into this Compact to implement a program using MCC Funding to advance El Salvador's progress towards economic growth and poverty reduction (the ''Program''); and

Whereas, the Parties agree that the Government shall establish, in accordance with Article III and Annex I, Fondo del Milenio (''FOMILENIO''), the entity that shall be responsible for the oversight and management of the implementation of this Compact on behalf of the Government;

Now, Therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

Article I. Purpose and Term

Section 1.1 Compact Goal; Objectives

The goal of this Compact is to advance economic growth and poverty reduction in the Northern Zone of El Salvador (the ''Compact Goal''). The Parties have identified the following project-level objectives (collectively, the ''Objectives'') to advance the Compact Goal, each of which is described in more detail in the Annexes attached hereto:

(a) Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities (the ''Human Development Objective'');

(b) Increase production and employment in the Northern Zone (the ''Productive Development Objective''); and

(c) Reduce travel cost and time within the Northern Zone, with the rest of country, and within the region (the ''Connectivity Objective'').

The Government expects to achieve, and shall use its best efforts to ensure the achievement of, the Compact Goal and these Objectives during the Compact Term.

Section 1.2 Projects

The Annexes attached hereto describe the component projects of the Program, the policy reforms and other activities related thereto (each, a ''Project'') that the Government will carry out, or cause to be carried out, in furtherance of this Compact to achieve the Objectives and the Compact Goal.

Section 1.3 Entry into Force; Compact Term

This Compact shall enter into force on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that (i) each Party has completed its domestic requirements for entry into force of this Compact (including as set forth in Section 3.20) and (ii) all conditions set forth in Section 4.1 have been satisfied by the Government and MCC (''Entry into Force''). This Compact shall remain in force for five (5) years from Entry into Force, unless earlier terminated in accordance with Section 5.4 (the ''Compact Term''). Notwithstanding the foregoing, Sections 2.1(a)(iii), 3.1 to 3.10, 3.16 and 3.20 shall provisionally apply prior to Entry into Force in accordance with the terms and conditions set forth in each such Section and shall remain in full force

and effect throughout the Compact Term.

Article II. Funding and Resources

Section 2.1 MCC Funding

(a) MCC's Contribution. MCC hereby grants to the Government, subject to the terms and conditions of this Compact, an amount not to exceed Four Hundred Sixty Million Nine Hundred and Forty Thousand United States Dollars (US $460,940,000) (''MCC Funding'') during the Compact Term to enable the Government to implement the Program and achieve the Objectives.

(i) Subject to Sections 2.1(a)(ii), 2.2(b) and 5.4(b), the allocation of MCC Funding within the Program and among and within the component Projects shall be as generally described in Annex II or as otherwise agreed upon by the Parties from time to time.

(ii) If at any time MCC determines that a condition precedent to an MCC Disbursement has not been satisfied, MCC may, upon written notice to the Government, reduce the total amount of MCC Funding by an amount equal to the amount estimated in the applicable Detailed Budget for the Program, Project, Project Activity or sub-activity for which such condition precedent has not been met. Upon the expiration or termination of this Compact, (A) any amount of MCC Funding not disbursed by MCC to the Government shall be automatically released from any obligation in connection with this Compact, and (B) any amounts of MCC Funding disbursed by MCC to the Government as provided in Section 2.1(b)(i), but not re-disbursed as provided in Section 2.1(b)(ii) or otherwise incurred as permitted pursuant to Section 5.4(e) prior to the expiration or termination of this Compact, shall be returned to MCC in accordance with Section 2.5(a)(ii).

(iii) Notwithstanding any other provision of this Compact and pursuant to the authority of Section 609(g) of the Millennium Challenge Act of 2003, as amended (the ''Act''), upon the conclusion of this Compact (and without regard to the satisfaction of all of the conditions for Entry into Force required under Section 1.3), MCC shall make available Nine Million Two Hundred and Eighteen Thousand United States Dollars (US$ 9,218,000) (''Compact Implementation Funding'') to facilitate certain aspects of Compact implementation as described in Schedule 2.1(a)(iii) attached hereto; *provided, however,* such Compact Implementation Funding shall be subject to (A) the limitations on the use or treatment of MCC Funding set forth in Section 2.3, as if such provision were in full force and effect, and (B) any other requirements for, and limitations on the use of, such Compact Implementation Funding as may be required by MCC in writing; *provided, further,* that any Compact Implementation Funding granted in accordance with this Section 2.1(a)(iii) shall be included in, and not additional to, the total amount of MCC Funding; and *provided, further,* any obligation to provide such Compact Implementation Funding shall expire upon the expiration or termination of this Compact or five (5) years from the conclusion of this Compact, whichever occurs sooner and in accordance with Section 5.4(e). Notwithstanding anything to the contrary in this Compact, this Section 2.1(a)(iii) shall provisionally apply, prior to Entry into Force, upon execution of this Compact by the Parties and ratification thereof by the Asamblea Legislativa and completion of the corresponding Publication Period, and this Section 2.1(a)(iii) shall remain in full force and effect throughout the Compact Term.

(b) Disbursements.

(i) Disbursements of MCC Funding. MCC shall from time to time make disbursements of MCC Funding (each such disbursement, an ''MCC Disbursement'') to a Permitted Account or through such other mechanism agreed by the Parties under and in accordance with the procedures and requirements set forth in a Supplemental Agreement to be entered into by MCC, FOMILENIO and the Government (or a mutually acceptable Government Affiliate) setting forth the specific terms and conditions of MCC Disbursements and Re-Disbursements and the procurement policies and procedures for the Program (the ''Disbursement Agreement'').

(ii) Re-Disbursements of MCC Funding. The release of MCC Funding from a Permitted Account (each such release, a ''Re-Disbursement'') shall be made in accordance with the procedures and requirements set forth in the Disbursement Agreement or as otherwise provided in any other Supplemental Agreement.

(c) Interest. Unless the Parties agree otherwise in writing, any interest or other earnings on MCC Funding that accrue (collectively, ''Accrued Interest'') shall be held in a Permitted Account and shall accrue in accordance with the requirements for the accrual and treatment of Accrued Interest as specified in Annex I or any Supplemental Agreement. On at least a quarterly basis and upon the termination or expiration of this Compact, the Government shall return, or ensure the return of, all Accrued Interest to any United States Government account designated by MCC.

(d) Currency. The Government shall ensure that all MCC Funding that is held in any Permitted Account shall be denominated in the currency of the United States of America (''United States Dollars'') prior to Re-Disbursement.

Section 2.2 Government Resources

(a) In accordance with Section 609(b)(2) of the Act, the Government shall make a contribution towards meeting the Objectives of this Compact. Section 6 of Annex II identifies such contribution.

(b) The Government shall provide or cause to be provided such Government funds and other resources, and shall take or cause to be taken such actions, including obtaining all necessary approvals and consents, as are specified in this Compact or in any Supplemental Agreement to which the Government is a party or as are otherwise necessary and appropriate effectively to carry out the Government Responsibilities or other responsibilities or obligations of the Government under or in furtherance of this Compact during the Compact Term and through the completion of any post-Compact Term activities, audits or other responsibilities.

(c) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget or any other Salvadoran governmental authority at a departmental, municipal, regional or other jurisdictional level materially reallocates or reduces the allocation in its respective budget, of the normal and expected resources that the Government or such other governmental authority, as applicable, would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, the Government shall notify MCC in writing within fifteen (15) days of such reallocation or reduction, such notification to contain information regarding the amount of the reallocation or reduction, the affected activities, and an explanation for the reallocation or reduction. In the event that MCC independently determines upon review of the executed national annual budget that such a material reallocation or reduction of resources has occurred, MCC shall notify the Government and, following such notification, the Government shall provide a written explanation for such reallocation or reduction and MCC may (i) reduce, in its sole discretion, the total amount of MCC Funding or any MCC

Disbursement by an amount equal to the amount estimated in the applicable Detailed Budget for the activity for which funds were reduced or reallocated, or (ii) otherwise suspend or terminate MCC Funding in accordance with Section 5.4(b).

(d) The Government shall use its best efforts to ensure that all MCC Funding is fully reflected and accounted for in the annual budget of the Republic of El Salvador on a multi-year basis.

Section 2.3 Limitations on the Use or Treatment of MCC Funding

(a) Abortions and Involuntary Sterilizations. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is subject to prohibitions on use of funds contained in (i) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)–(3)), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (ii) any provision of law comparable to the eleventh and fourteenth provisos under the heading ''Child Survival and Health Programs Fund'' of division E of Public Law 108–7 (117 Stat. 162), a United States statute.

(b) United States Job Loss or Displacement of Production. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(i) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(ii) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(iii) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(iv) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(v) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(vi) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(vii) Providing general budget support for an organization that engages in any activity prohibited above.

(c) Military Assistance and Training. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit.

(d) Prohibition of Assistance Relating to Environmental, Health or Safety Hazards. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with environmental guidelines delivered by MCC to the Government or posted by MCC on its Web site or otherwise publicly made available, as such guidelines may be amended from time to time (the ''Environmental Guidelines''), including any definition of ''likely to cause a significant environmental, health, or safety hazard'' as may be set forth in such Environmental Guidelines.

(e) Taxation.

(i) Taxes. The Government shall ensure that the Program, MCC Funding, Accrued Interest, and any other Program Asset shall be free from any taxes imposed under the laws currently or hereafter in effect in the Republic of El Salvador during the Compact Term. This exemption shall apply to any use of MCC Funding, Accrued Interest, and any other Program Asset, including any Exempt Uses, and to any work performed under or activities undertaken in furtherance of this Compact by any person or entity (including contractors and grantees) funded by MCC Funding, and shall apply to all taxes, tariffs, duties, withholdings and other levies (each, a ''Tax'' and collectively, ''Taxes''), including the following:

(1) To the extent attributable to MCC Funding, income taxes and other taxes on profit or businesses imposed on organizations or entities receiving MCC Funding, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in the Republic of El Salvador, municipal or departmental taxes, or any other tax, duty, charge or fee of whatever nature;

(2) Customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally owned automobiles, for Program use or the personal use of individuals who are neither citizens nor permanent residents of the Republic of El Salvador and who are present in the Republic of El Salvador for purposes of carrying out the Program and their family members, including all charges based on the value of such imported goods;

(3) Taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of the Republic of El Salvador, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to MCC Funding; and

(4) Taxes or duties levied for the purchase of goods or services funded by MCC Funding, including sales taxes, tourism taxes, value-added taxes (''VAT''), or other similar charges.

(ii) This Section 2.3(e) shall apply to, but is not limited to, (A) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by MCC Funding; (B) any supplies, equipment, materials, property or other goods (referred to collectively in this Section 2.3(e) as ''goods'') or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, the Republic of El Salvador by MCC, or by any person or entity (including contractors and grantees) as part of, or in conjunction with, MCC Funding or the Program; (C) any contractor, grantee, or other organization carrying out activities funded in whole or in part by MCC Funding; and (D) any employee of such organizations (the uses set forth in clauses (A) through (D) are collectively referred to herein as ''Exempt Uses'').

(iii) If a Tax has been levied and paid contrary to the requirements of this

Section 2.3(e), then the Government shall refund to MCC, to an account designated by MCC, the amount of such Tax payment within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the date on which the Government is notified in writing, in accordance with procedures agreed to by the Parties, of such Tax levy and payment; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 2.3(e)(iii) and no MCC Funding, Accrued Interest, or any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding (collectively, the ''Program Assets'') may be applied by the Government in satisfaction of its obligations under this paragraph.

(iv) To implement this Section 2.3(e), the Government may, with the consent of MCC and through Implementation Letters, establish some or all of the following: (A) A mechanism pursuant to which the Government will simultaneously pay the VAT portion of any invoices to be paid, in whole or in part, by FOMILENIO; (B) a mechanism pursuant to which, for Salvadoran income tax purposes, all payments or transfers made by FOMILENIO with MCC Funding are not considered as ''income, profits, receipts or revenues'' for the recipients of such payments or transfers (renta excluida) and therefore are excluded from the definition of income and the monthly estimated income tax payments and from the withholding tax regime applicable to providers of goods and services; (C) a mechanism pursuant to which the Government will reimburse to MCC or FOMILENIO, as appropriate, on a regular and timely basis, Taxes paid contrary to the requirements of this Section 2.3(e) due to the impracticality of implementing such requirements with respect to certain types of Taxes or the amount of such Taxes not being susceptible to precise determination; (D) a mechanism for ensuring the tax-free importation, use and re-exportation of goods, services or personal belongings of individuals (including all providers of goods and services) described in Section 2.3(e)(i)(2); and (E) the provision by the Government of a tax-exemption certificate to qualified individuals. At MCC's request, the Parties shall memorialize, in a mutually acceptable Supplemental Agreement or Implementation Letter or other suitable document, the foregoing mechanisms and the Government shall take any other appropriate action to facilitate the administration of this Section 2.3(e). All payments made pursuant to this Section 2.3(e)(iv) shall be made with national funds.

(f) Alteration. No MCC Funding, Accrued Interest or other Program Asset shall be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in the Republic of El Salvador that would have the effect of requiring or allowing any impoundment, rescission or sequestration of any MCC Funding, Accrued Interest or other Program Asset. The Government shall ensure the due compliance and exact application thereof.

(g) Liens or Encumbrances. No MCC Funding, Accrued Interest or other Program Asset shall be subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each, a ''Lien''), except with the prior approval of MCC in accordance with Section 3(c) of Annex I. In the event of the imposition of any Lien not so approved, the Government shall promptly seek the release of such Lien and, if the Lien is not released within thirty (30) days of the imposition thereof, shall pay all amounts owed or take all other actions necessary to obtain such release; *provided, however,* that the Government shall apply national funds to satisfy its obligations under this Section 2.3(g) and no MCC Funding, Accrued Interest or other Program Asset may be applied by the Government in satisfaction of its obligations under this Section 2.3(g). The Government shall ensure the due compliance and exact application thereof.

(h) Other Limitations. The Government shall ensure that the use or treatment of MCC Funding, Accrued Interest, and other Program Assets shall be subject to and in conformity with such other limitations (i) as required by the applicable law of the United States of America now or hereafter in effect during the Compact Term, (ii) as advisable under or required by applicable United States Government policies now or hereafter in effect during the Compact Term, or (iii) to which the Parties may otherwise agree in writing.

(i) Utilization of Goods, Services and Works. The Government shall ensure, unless otherwise agreed by the Parties in writing, that any Program Assets and any services, facilities or works funded in whole or in part (directly or indirectly) by MCC Funding shall be used solely in furtherance of this Compact.

(j) Notification of Applicable Laws and Policies. MCC shall notify the Government of any applicable United States law or policy affecting the use or treatment of MCC Funding, whether or not specifically identified in this Section 2.3, and shall provide to the Government a copy of the text of any such applicable law and a written explanation of any such applicable policy.

Section 2.4 Incorporation; Notice; Clarification

(a) The Government shall include, or ensure the inclusion of, all of the requirements set forth in Section 2.3 in all Supplemental Agreements (except for Supplemental Agreements with Providers defined in Section 2.4(b)(ii) below) to which MCC is not a party.

(b) The Government shall ensure notification of all of the requirements set forth in Section 2.3 to any Provider and to all of such Provider's relevant officers, directors, employees, agents, representatives, Affiliates, and to any of such Provider's contractors, sub-contractors, grantees and sub-grantees of any Provider. The term ''Provider'' shall mean (i) FOMILENIO, (ii) any Government Affiliate or Permitted Designee (other than FOMILENIO) that receives or utilizes any Program Assets in carrying out activities in furtherance of this Compact or (iii) any third party who receives at least US$ 50,000 in the aggregate of MCC Funding (other than employees of FOMILENIO) during the Compact Term or such other amount as the Parties may agree in writing, whether directly from MCC, indirectly through Re-Disbursements, or otherwise.

(c) In the event the Government or any Provider requires clarification from MCC as to whether an activity contemplated to be undertaken in furtherance of this Compact violates or may violate any provision of Section 2.3, the Government shall notify MCC in writing and provide in such notification a detailed description of the activity in question. In such event, the Government shall not proceed, and shall use its best efforts to ensure that no relevant Provider proceeds, with such activity, and the Government shall ensure that no Re-Disbursements shall be made for such activity, until MCC advises the Government or such Provider in writing that the activity is permissible. MCC shall use good faith efforts to respond timely to such notification for clarification.

Section 2.5 Refunds; Violation

(a) Notwithstanding the availability to MCC, or the exercise by MCC, of any other remedies, including under international law, this Compact or any Supplemental Agreement:

(i) If any amount of MCC Funding, Accrued Interest, or any other Program Asset is used for any purpose prohibited under this Article II or otherwise in violation of any of the terms and conditions of this Compact, any guidance in any Implementation Letter or any Supplemental Agreement, then MCC, upon written notice, may require the Government to repay promptly to MCC to an account designated by MCC or to others as MCC may direct the amount of such misused MCC Funding or Accrued Interest, or the cash equivalent of the value of any other misused Program Asset, in United States Dollars, plus any interest that accrued or would have accrued thereon, within thirty (30) days after the Government is notified, whether by MCC or other duly authorized representative of the United States Government, of such prohibited use; provided, however, the Government shall apply national funds to satisfy its obligations under this Section 2.5(a)(i) and no MCC Funding, Accrued Interest, or any other Program Asset may be applied by the Government in satisfaction of its obligations under this Section 2.5(a)(i); and

(ii) Upon the termination or suspension of all or any portion of this Compact or upon the expiration of this Compact, the Government shall, subject to the requirements of Sections 5.4(e) and 5.4(f), refund, or ensure the refund to MCC, to such account designated by MCC, the amount of any MCC Funding, plus any Accrued Interest, promptly, but in no event later than thirty (30) days after the Government receives MCC's request for such refund; *provided, however,* that if this Compact is terminated or suspended in part, MCC may request a refund for only the amount of MCC Funding, plus any Accrued Interest, then allocated to the terminated or suspended portion.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 2.5 for a refund shall continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

(c) If MCC determines that any activity or failure to act violates, or may violate, any Section in this Article II, then MCC may refuse any further MCC Disbursements for or conditioned upon such activity, and may take any action to prevent any Re-Disbursement related to such activity.

Section 2.6 Bilateral Agreement

All MCC Funding shall be considered United States assistance under the General Agreement for Economic, Technical and Related Assistance between the Government of the United States of America and the Government of the Republic of El Salvador, dated June 16, 1962, as amended from time to time (the ''Bilateral Agreement''). If there are conflicts or inconsistencies between any parts of this Compact and the Bilateral Agreement, as either may be amended from time to time, the provisions of this Compact shall prevail over those of the Bilateral Agreement.

Article III. Implementation

Section 3.1 Creation of the ''Fondo del Milenio''

The Government promptly shall take all necessary and appropriate actions to create, or cause to be created, pursuant to a legislative decree that develops the provisions of this Article III and is, in form and substance, mutually agreeable to the Parties (the ''Law Creating FOMILENIO''), an autonomous public entity, with technical character and of public interest, named the ''FONDO DEL MILENIO,'' hereinafter also known as ''FOMILENIO,'' for so long as there are pending activities, rights or obligations with respect to the Compact. FOMILENIO shall have legal capacity and with property of its own, with autonomy in the exercise of its functions, in the financial and administrative aspects as well as in its budget. Its domicile will be in the city of San Salvador, Republic of El Salvador but it will be able to establish branch offices anywhere in the Republic of El Salvador.

Section 3.2 Responsibilities

FOMILENIO shall administer its resources efficiently and comply with all of the responsibilities and obligations designated and assumed by it (i) pursuant to this Compact and Supplemental Agreements, (ii) pursuant to the Governing Documents, (iii) in accordance with all applicable laws then in effect in El Salvador that do not contravene the provisions of this Compact, and (iv) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices.

Section 3.3 Fundamental Objectives

The fundamental objectives of FOMILENIO shall be the Compact Goal, the Human Development Objective, the Productive Development Objective and the Connectivity Objective.

Section 3.4 Board and Management Generally

(a) FOMILENIO shall have: (i) A board of directors (the ''Board'') that shall be responsible for the oversight and supervision of all FOMILENIO's activities and shall ensure the execution of FOMILENIO's responsibilities and obligations set forth in this Compact and the Governing Documents, as well as the compliance of the obligations of the Government under this Compact, and (ii) a management unit (the ''Management'') with day-to-day management responsibility for the implementation of this Compact.

(b) The Board shall appoint, with the approval of MCC, an *ad honorem* Advisory Council (the ''Advisory Council''), which shall be independent from FOMILENIO. The composition, roles and responsibilities of the Advisory Council shall be those established in Annex I hereto and in accordance with the provisions of the Governing Documents.

Section 3.5 Board

(a) Formation. The Board shall be formed, constituted, governed and operated in accordance with the terms set forth in this Compact, the Governing Documents, and the Supplemental Agreements.

(b) Constitution. The Board shall consist of at least seven (7) but no more than eleven (11) voting members, and at least two (2) non-voting observers. The Board members shall be designated in accordance with Section 3.5(e). One of the voting members designated by the Government in accordance with the Reglamento shall serve as the chairman of the Board (the ''Chair'') and legal representative of FOMILENIO.

(c) Ad-honorem Membership. The Board members will exercise their functions ad-honorem; therefore, they will not receive any salary, wages or other compensations for their work relating to their membership on the Board.

(d) No Delegation; Alternates. The members of the Board shall be prohibited from delegating their rights and responsibilities as members of the Board other than to their prior-appointed alternates who shall be permitted to vote on behalf of such primary member in the case of such primary member's absence.

(e) Appointment of Board Members. The required minimum seven (7) voting members of the Board shall be chosen as follows: (i) Four (4) of the voting members of the Board, and each of their alternates, shall be designated by the Government, subject to the prior receipt

of a no-objection notice from MCC; (ii) one (1) of the voting members shall be a member of the private sector, and such member, and his/her alternate, shall be selected and appointed in accordance with the procedure set forth in the Reglamento; and (iii) two (2) of the voting members shall be representatives of NGOs, and such members, and each of their alternates, shall be selected and appointed in accordance with a process agreed upon by the Government and MCC. Initially, the voting members designated by the Government shall be: (i) The Technical Secretary of the President of the Republic of El Salvador; (ii) the Minister of Finance; (iii) the Minister of Foreign Affairs; and (iv) the Minister of Agriculture. The required minimum two non-voting observers of the Board shall be (i) a representative designated by MCC (the ''MCC Representative'') and (ii) the Minister of the Environment and Natural Resources. In the event that one of the NGO voting members is not from an environmentally focused NGO, an additional observer from such an organization, subject to the prior receipt of a no-objection notice from MCC, shall be appointed. Each non-voting observer shall be an ''Observer.'' The Reglamento shall set forth the procedures for selection of any additional Board members and any additional Observers and the procedures for any change of the Chair and any change in the composition of the Board.

(f) Roles and Responsibilities of the Board. The Board shall:

(i) Supervise and manage the Program and each of its component Projects and Project Activities;

(ii) Approve the regulations, manuals, instructions, internal organization, expenses, budgets and procurements for the execution of the Program;

(iii) Propose to the Government the Executive Decrees which may be necessary for the internal organization and operation of FOMILENIO;

(iv) Approve, execute and implement the necessary Supplemental Agreements for the execution of the Program;

(v) Appoint the Executive Director and define the Executive Director's role and responsibilities and delegate to the Executive Director the right to execute any agreement previously approved by the Board;

(vi) Request MCC Disbursements that are necessary for the execution of the Program; and

(vii) Carry out any other action that may have been granted by the Compact and the Executive Decree(s) specially created for the compliance and execution of the Program.

Section 3.6 Executive Director

The Executive Director of FOMILENIO (the ''Executive Director'') shall have the power and authority delegated to the Executive Director by the Board.

Section 3.7 Patrimony and Budget

The patrimony of FOMILENIO will be constituted through the grant of MCC Funding from the Government of the United States of America acting through MCC pursuant to this Compact. FOMILENIO will have a multi-annual budget that will be approved as an extraordinary budget by the Legislative Assembly of El Salvador (the ''Asamblea Legislativa'').

Section 3.8 Oversight and Control

FOMILENIO will be subject to oversight and control by the Comptroller of the Republic of El Salvador (Corte de Cuentas de la República de El Salvador).

Section 3.9 Audits

FOMILENIO will be subject to financial audits to verify the proper investment of its funds and patrimony. For this purpose, FOMILENIO will have an internal audit department appointed by the Board. FOMILENIO will also be subject to external financial controls in accordance with the Compact.

Section 3.10 Reglamento

The President of the Republic of El Salvador shall issue the Executive Decree through which the management, operations, and internal organization, among other rules and regulations of FOMILENIO are developed and regulated (the ''Reglamento'') consistent with this Compact, including Annex I, and the Law Creating FOMILENIO. Notwithstanding anything to the contrary in this Compact, Sections 3.1 through 3.10 shall provisionally apply, prior to Entry into Force, upon the execution of this Compact by the Parties and the ratification of this Compact by the Asamblea Legislativa and completion of the corresponding Publication Period, and this Section 3.10 shall remain in full force and effect throughout the Compact Term.

Section 3.11 Implementation Framework

This Compact shall be implemented by the Parties in accordance with this Article III and as further specified in the Annexes and the Supplemental Agreements.

Section 3.12 Government Responsibilities

(a) The Government shall have principal responsibility for oversight and management of the implementation of the Program (i) in accordance with the terms and conditions specified in this Compact and the Supplemental Agreements, (ii) in accordance with all applicable laws then in effect in El Salvador, and (iii) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices (collectively, the ''Government Responsibilities''). Unless otherwise expressly provided, any reference to the Government Responsibilities or any other responsibilities or obligations of the Government herein shall be deemed to apply to any Government Affiliate and any of their respective directors, officers, employees, contractors, sub-contractors, grantees, sub-grantees, agents or representatives.

(b) The Government shall ensure that no person or entity shall participate in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding, in which (i) the entity, the person, members of the person's family down to the fourth level of consanguinity or the second level of affinity, or organizations controlled by or substantially involving such person or entity, has or have a direct or indirect financial or other interest, or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the Government the conflict of interest and, following such disclosure, the Parties agree in writing to proceed notwithstanding such conflict. The Government shall ensure that no person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of de minimis value and otherwise consistent with such guidance as MCC may provide from time to time.

(c) The Government shall not designate any person or entity, including any Government Affiliate, to implement, in whole or in part, this Compact or any Supplemental Agreement (including any Government

Responsibilities or any other responsibilities or obligations of the Government under this Compact or any Supplemental Agreement), or to exercise any rights of the Government under this Compact or any Supplemental Agreement, except as expressly provided herein or with the prior written consent of MCC; *provided, however,* the Government may designate FOMILENIO or, with the prior written consent of MCC, such other mutually acceptable persons or entities (each, a ''Permitted Designee'') to implement some or all of the Government Responsibilities or any other responsibilities or obligations of the Government or to exercise any rights of the Government under this Compact or any Supplemental Agreement, each in accordance with the terms and conditions set forth in this Compact, such Supplemental Agreement (referred to herein collectively as ''Designated Rights and Responsibilities''). Notwithstanding any provision herein or any other agreement to the contrary, no such designation shall relieve the Government of such Designated Rights and Responsibilities, for which the Government shall retain ultimate responsibility. In the event that the Government designates any person or entity, including any Government Affiliate, to implement any portion of the Government Responsibilities or other responsibilities or obligations of the Government, or to exercise any rights of the Government under this Compact and the Supplemental Agreements, in accordance with this Section 3.12(c), then the Government shall (i) cause such person or entity to perform such Designated Rights and Responsibilities in the same manner and to the full extent to which the Government is obligated to perform such Designated Rights and Responsibilities, (ii) ensure that such person or entity does not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity, and (iii) cause such person or entity to certify to MCC in writing that it will so perform such Designated Rights and Responsibilities and will not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity without the prior written consent of MCC.

(d) The Government shall, upon a request from MCC, execute, or ensure the execution of, an assignment to MCC of any cause of action which may accrue to the benefit of the Government, a Government Affiliate or any Permitted Designee, including FOMILENIO, in connection with or arising out of any activities funded in whole or in part (directly or indirectly) by MCC Funding.

(e) The Government shall ensure that (i) no decision of FOMILENIO is modified, supplemented, unduly influenced or rescinded by any governmental authority, except by a non-appealable judicial decision, and (ii) the authority of FOMILENIO shall not be expanded, restricted, or otherwise modified, except in accordance with this Compact, any Governing Document or any other Supplemental Agreement between the Parties.

(f) The Government shall ensure that all persons and entities that enter into agreements to provide goods, services or works under the Program or in furtherance of this Compact shall do so in accordance with the Procurement Guidelines and shall obtain all necessary immigration, business and other permits, licenses, consents and approvals to enable them and their personnel to fully perform under such agreements.

Section 3.13 Government Deliveries

The Government shall proceed, and cause others to proceed, in a timely manner to deliver to MCC all reports, notices, certificates, documents or other deliveries required to be delivered by the Government under this Compact or any Supplemental Agreement, in form and substance as set forth in this Compact or in any such Supplemental Agreement.

Section 3.14 Government Assurances

The Government hereby provides the following assurances to MCC that as of the date this Compact is signed:

(a) The information contained in the Proposal and any agreement, report, statement, communication, document or otherwise delivered or communicated to MCC by or on behalf of the Government on or after the date of the submission of the Proposal (i) are true, correct and complete in all material respects and (ii) do not omit any fact known to the Government that if disclosed would (A) alter in any material respect the information delivered, (B) likely have a material adverse effect on the Government's ability to implement effectively, or ensure the effective implementation of, the Program or any Project or otherwise to carry out its responsibilities or obligations under or in furtherance of this Compact, or (C) have likely adversely affected MCC's determination to enter into this Compact or any Supplemental Agreement.

(b) Unless otherwise disclosed in writing to MCC, the MCC Funding made available hereunder is in addition to the normal and expected resources that the Government usually receives or budgets for the activities contemplated herein from external or domestic sources.

(c) This Compact does not conflict and will not conflict with any international agreement or obligation to which the Government is a party or by which it is bound.

(d) No payments have been (i) received by any official of the Government or any other Governmental Affiliate in connection with the procurement of goods, services or works to be undertaken or funded in whole or in part (directly or indirectly) by MCC Funding, except fees, taxes, or similar payments legally established in the Republic of El Salvador (subject to Section 2.3(e)) and consistent with the applicable requirement of the laws of El Salvador, or (ii) made to any third party, in connection with or in furtherance of this Compact, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*).

Section 3.15 Implementation Letters; Supplemental Agreements

(a) MCC may, from time to time, issue one or more letters consistent with this Compact to furnish additional information or guidance to assist the Government in the implementation of this Compact (each, an ''Implementation Letter''). The Government shall apply such guidance in implementing this Compact.

(b) The details of any funding, implementing and other arrangements in furtherance of this Compact may be memorialized in one or more agreements or instruments between (i) the Government (or any Government Affiliate or Permitted Designee) and MCC, (ii) MCC or the Government (or any Government Affiliate or Permitted Designee) and any Provider or Permitted Designee, or (iii) Providers where neither MCC nor the Government is a party, before, on or after Entry into Force (each, a ''Supplemental Agreement''). The Government shall deliver, or cause to be delivered, to MCC within five (5) days of its request, or such other period as may be specified in the Disbursement Agreement, the execution copy of any Supplemental Agreement to which MCC is not a party.

(c) The Government agrees to execute and deliver such further documents and instruments and to take such further actions as may be necessary or desirable and reasonably requested by MCC to

comply with this Compact, including Supplemental Agreements.

Section 3.16 Procurement; Awards of Assistance

(a) Any procurement pursuant to this Compact or any of its Supplemental Agreements shall be governed by and consistent with the procurement guidelines (the ''Procurement Guidelines'') set forth in the Disbursement Agreement. Accordingly, neither the *Ley de Adquisiciones y Contrataciones de la Administración Pública,* its corresponding Executive Decree or any other laws or regulations of the Republic of El Salvador regarding procurements will apply thereto. The Government shall ensure that the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact will be conducted in accordance with the Procurement Guidelines. Such Procurement Guidelines shall include the following requirements:

(i) Internationally accepted procurement rules with open, fair and competitive procedures are used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

(ii) Solicitations for goods, services, and works shall be based upon a clear and accurate description of the goods, services or works to be acquired;

(iii) Contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods, services, and works.

(b) The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, records regarding the receipt and use of goods, services and works acquired in furtherance of this Compact, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired in furtherance of this Compact, and the basis of award of contracts, grants and other agreements in furtherance of this Compact.

(c) The Government shall use its best efforts to ensure that information, including solicitations, regarding procurement, grant and other agreement actions funded (or to be funded) in whole or in part (directly or indirectly) by MCC Funding shall be made publicly available in the manner outlined in the Procurement Guidelines or in any other manner agreed upon by the Parties in writing.

(d) The Government shall ensure that no goods, services or works that are funded in whole or in part (directly or indirectly) by MCC Funding are procured pursuant to orders or contracts firmly placed or entered into prior to Entry into Force, except as the Parties may otherwise agree in writing.

(e) The Government shall ensure that FOMILENIO and any other Permitted Designee follows, and uses its best efforts to ensure that all Providers follow, the Procurement Guidelines in procuring (including soliciting) goods, services and works and in awarding and administering contracts, grants and other agreements in furtherance of this Compact, and shall furnish MCC evidence of the adoption of the Procurement Guidelines by FOMILENIO no later than the time specified in the Disbursement Agreement.

(f) The Government shall include, or ensure the inclusion of, the requirements of this Section 3.16 into all Supplemental Agreements between the Government, any Government Affiliate or Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, on the one hand, and a Provider, on the other hand.

(g) Notwithstanding anything to the contrary in this Compact, this Section 3.16 shall provisionally apply, prior to Entry into Force, upon the execution of this Compact by the Parties and the ratification of this Compact by the Asamblea Legislativa and completion of the corresponding Publication Period, and this Section 3.16 shall remain in full force and effect throughout the Compact Term.

Section 3.17 Policy Performance; Policy Reforms

In addition to the specific policy and legal reform commitments identified in Annex I and the Schedules thereto, the Government shall seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the Act, and the MCA selection criteria and methodology published by MCC pursuant to Section 607 of the Act from time to time (the ''MCA Eligibility Criteria'').

Section 3.18 Records and Information; Access; Audits; Reviews

(a) Reports and Information. The Government shall furnish to MCC, and shall use its best efforts to ensure that all Providers and any other third party receiving MCC Funding, as appropriate, furnish to the Government (and the Government shall provide to MCC), any records and other information required to be maintained under this Section 3.18 and such other information, documents and reports as may be necessary or appropriate for the Government to effectively carry out its obligations under this Compact, including under Section 3.22.

(b) Government Books and Records. The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, accounting books, records, documents and other evidence relating to this Compact adequate to show, to the satisfaction of MCC, the use of all MCC Funding, including all costs incurred by the Government and the Providers in furtherance of this Compact, the receipt, acceptance and use of goods, services and works acquired in furtherance of this Compact by the Government and the Providers, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired by the Government and the Providers in furtherance of this Compact, the basis of award of Government and other contracts and orders in furtherance of this Compact, the overall progress of the implementation of the Program, and any documents required by this Compact or any Supplemental Agreement or reasonably requested by MCC upon reasonable notice (''Compact Records''). The Government shall maintain, and shall use its best efforts to ensure that FOMILENIO and all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with the prior written approval by MCC, other accounting principles, such as those (i) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (ii) then prevailing in El Salvador. Compact Records shall be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any then-pending litigation, claims or audit findings or any statutory requirements.

(c) Access. Upon the request of MCC, the Government, at all reasonable times, shall provide, or cause to be provided, to authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this

Compact, and any agents or representatives engaged by MCC or a Permitted Designee to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect (A) activities funded in whole or in part (directly or indirectly) by MCC Funding or undertaken in connection with the Program, the utilization of goods and services purchased or funded in whole or in part (directly or indirectly) by MCC Funding, and (B) Compact Records, including those of the Government or any Provider, relating to activities funded or undertaken in furtherance of, or otherwise relating to, this Compact. The Government shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, Affiliates, contractors, representatives and agents of the Government or any Provider.

(d) Audits.

(i) Government Audits. Except as the Parties may otherwise agree in writing, the Government, on at least a semi-annual basis, shall conduct, or cause to be conducted, financial audits of all MCC Disbursements and Re-Disbursements covering the period from the execution of the Compact until the earlier of the following December 31 and June 30, and covering each six-month period thereafter ending December 31 and June 30, through 2012, in accordance with the following terms. As requested by MCC in writing, the Government shall use, or cause to be used, or select, or cause to be selected, an auditor named on the approved list of auditors in accordance with the Guidelines for Financial Audits Contracted by Foreign Recipients (the ''Audit Guidelines'') issued by the Inspector General of the United States Agency for International Development (the ''Inspector General'') and as approved by MCC, to conduct such annual audits. Such audits shall be performed in accordance with such Audit Guidelines and be subject to quality assurance oversight by the Inspector General in accordance with such Audit Guidelines. Any such audit shall be completed and delivered to MCC no later than ninety (90) days after the first period to be audited and no later than ninety (90) days after each anniversary of Entry into Force thereafter, or such other period as the Parties may otherwise agree in writing.

(ii) Audits of U.S. Entities. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States non-profit organization, on the other hand, state that the United States organization is subject to the applicable audit requirements contained in OMB Circular A–133, notwithstanding any other provision of this Compact to the contrary. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(iii) Audit Plan. The Government shall submit, or cause to be submitted, to MCC, no later than twenty (20) days prior to the date of its adoption, a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of any Covered Providers, which audit plan, in the form and substance as approved by MCC, the Government shall adopt, or cause to be adopted, no later than sixty (60) days prior to the end of the first period to be audited (such plan, the ''Audit Plan'').

(iv) Covered Provider. A ''Covered Provider'' is (A) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$ 300,000 or more of MCC Funding in any FOMILENIO fiscal year or any other non-United States person or entity that receives (directly or indirectly) US$ 300,000 or more of MCC Funding from any Provider in such fiscal year, or (B) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$ 500,000 or more of MCC Funding in any FOMILENIO fiscal year or any other United States person or entity that receives (directly or indirectly) US$ 500,000 or more of MCC Funding from any Provider in such fiscal year.

(v) Corrective Actions. The Government shall use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of its own records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(vi) Audit Reports. The Government shall furnish, or use its best efforts to cause to be furnished, to MCC an audit report in a form satisfactory to MCC for each audit required by this Section 3.18, other than audits arranged for by MCC, no later than ninety (90) days after the end of the period under audit, or such other time as may be agreed by the Parties from time to time.

(vii) Other Providers. For Providers who receive MCC Funding pursuant to direct contracts or agreements with MCC, MCC shall include appropriate audit requirements in such contracts or agreements and shall, on behalf of the Government, unless otherwise agreed by the Parties, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(viii) Audit by MCC. MCC retains the right to perform, or cause to be performed, the audits required under this Section 3.18 by utilizing MCC Funding or other resources available to MCC for this purpose, and to audit, conduct a financial review, or otherwise ensure accountability of any Provider or any other third party receiving MCC Funding, regardless of the requirements of this Section 3.18.

(e) Application to Providers. The Government shall include, or ensure the inclusion of, at a minimum, the requirements of:

(i) Paragraphs (a), (b), (c), (d)(ii), (d)(iii), (d)(v), (d)(vi), and (d)(viii) of this Section 3.18 into all Supplemental Agreements between the Government, any Government Affiliate, any Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents (each, a ''Government Party''), on the one hand, and a Covered Provider that is not a non-profit organization domiciled in the United States, on the other hand;

(ii) Paragraphs (a), (b), (c), (d)(ii), and (d)(viii) of this Section 3.18 into all Supplemental Agreements between a Government Party and a Provider that does not meet the definition of a Covered Provider; and

(iii) Paragraphs (a), (b), (c), (d)(ii), (d)(v) and (d)(viii) of this Section 3.18 into all Supplemental Agreements between a Government Party and a Covered Provider that is a non-profit organization domiciled in the United States.

(f) Reviews or Evaluations. The Government shall conduct, or cause to be conducted, such performance reviews, data quality reviews, environmental and social audits, or program evaluations during the Compact Term or otherwise and in accordance with the M&E Plan or as otherwise agreed in writing by the Parties.

(g) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews

or evaluations required under this Compact, including as reflected in Exhibit A to Annex II, and in no event shall the Government be responsible for the costs of any such audits, reviews or evaluations from financial sources other than MCC Funding.

Section 3.19 Insurance; Performance Guarantees

The Government shall, to MCC's satisfaction, insure or, cause to be insured, all Program Assets and shall obtain, or cause to be obtained, such other appropriate insurance and other protections to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and post adequate performance bonds or other guarantees. FOMILENIO or the Implementing Entity, as applicable, shall be named as the payee on any such insurance and the beneficiary of any such guarantee, including performance bonds to the extent permissible under applicable laws unless otherwise agreed by the Parties. To the extent it is not named as the insured party, FOMILENIO shall be named as an additional insured on any such insurance or other guarantee, to the extent permissible under applicable laws unless otherwise agreed by the Parties. Upon MCC's request and to the extent permissible under applicable laws, MCC shall be named as an additional insured on any such insurance or other guarantee, to the extent permissible under applicable laws. The Government shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss of Program Assets or to pursue the procurement of the covered goods, services, works or otherwise;*provided, however,* at MCC's election, such proceeds shall be deposited in a Permitted Account as designated by FOMILENIO and acceptable to MCC or as otherwise directed by MCC. To the extent FOMILENIO is held liable under any indemnification or other similar provision of any agreement between FOMILENIO, on the one hand, and any other Provider or other third party, on the other hand, the Government shall pay in full on behalf of FOMILENIO any such obligation; *provided, further,* the Government shall apply national funds to satisfy its obligations under this Section 3.19 and no MCC Funding, Accrued Interest, or other Program Asset may be applied by the Government in satisfaction of its obligations under this Section 3.19.

Section 3.20 Domestic Requirements

The Government shall proceed in a timely manner to seek ratification of this Compact as necessary or required by the laws of El Salvador, or similar domestic requirement, in order that (a) this Compact shall be given the status of an international agreement, (b) no laws of El Salvador (other than the Constitution of El Salvador) now or hereafter in effect shall take precedence or prevail over this Compact during the Compact Term (or a longer period to the extent provisions of this Compact remain in force following the expiration of the Compact Term pursuant to Section 5.13), and (c) each of the provisions of this Compact (and each of the provisions of any Supplemental Agreement to which MCC is a party) is valid, binding and in full force and effect under the laws of El Salvador. The Government shall initiate such process promptly after the conclusion of this Compact. Notwithstanding anything to the contrary in this Compact, this Section 3.20 shall provisionally apply, prior to Entry into Force, upon the execution of this Compact by the Parties and the ratification of this Compact by the Asamblea Legislativa and completion of the corresponding Publication Period, and this Section 3.20 shall remain in full force and effect throughout the Compact Term.

Section 3.21 No Conflict

The Government shall undertake not to enter into any agreement in conflict with this Compact or any Supplemental Agreement during the Compact Term.

Section 3.22 Reports

The Government shall provide, or cause to be provided, to MCC at least on each anniversary of Entry into Force (or such other anniversary agreed by the Parties in writing) and otherwise within thirty (30) days of any written request by MCC, or as otherwise agreed in writing by the Parties, the following information:

(a) A description of the Program and each Project funded in furtherance of this Compact, including a detailed description of the objectives and measures for results of the Program and the Projects;

(b) The progress made by the Republic of El Salvador toward achieving the Compact Goal and the Objectives;

(c) A description of the extent to which MCC Funding has been effective in helping the Republic of El Salvador to achieve the Compact Goal and the Objectives;

(d) A description of the coordination of MCC Funding with other United States foreign assistance and other related United States Government trade policies;

(e) A description of the coordination of MCC Funding with assistance provided by other donor countries;

(f) Any report, document or filing that the Government, any Government Affiliate or any Permitted Designee submits to any government body in connection with this Compact;

(g) Any report or document required to be delivered to MCC under the Environmental Guidelines, any Audit Plan, or any Implementation Documents; and

(h) Any other report, document or information requested by MCC or required by this Compact or any Supplemental Agreement.

Article IV. Conditions Precedent; Deliveries

Section 4.1 Conditions Prior to Entry into Force and Deliveries

As conditions precedent to Entry into Force, the Parties shall satisfy the conditions set forth in this Section 4.1.

(a) The Government (or a mutually acceptable Government Affiliate), a Permitted Designee, and MCC shall execute a Disbursement Agreement, which agreement shall be in full force and effect as of Entry into Force.

(b) (i) The Government shall deliver one or more of the Supplemental Agreements or other documents identified in Exhibit B attached hereto, which agreements or other documents shall be fully executed by the parties thereto and in full force and effect, or (ii) the Government (or a mutually acceptable Government Affiliate), a Permitted Designee, and MCC shall execute one or more term sheets that set forth the material and principal terms and conditions that will be included in any such Supplemental Agreement or other documents that have not been entered into or have not become effective as of Entry into Force (the ''Supplemental Agreement Term Sheets'').

(c) The Government shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative of the Government executing any document under this Compact, such written statement to be signed by a duly authorized official of the Government other than the Principal Representative or any such Additional Representative.

(d) The Government shall deliver a certificate signed and dated by the Principal Representative of the Government, or such other duly

authorized representative of the Government acceptable to MCC, that:

(i) Certifies the Government has completed all of its domestic requirements in order that (A) this Compact (and any Supplemental Agreement to which MCC is a party) shall be given the status of an international agreement, (B) no laws of El Salvador (other than the Constitution of El Salvador) now or hereafter in effect shall take precedence or prevail over this Compact (or any Supplemental Agreement to which MCC is a party) during the Compact Term (or a longer period to the extent provisions of this Compact remain in force following the Compact Term pursuant to Section 5.13), and (C) each of the provisions of this Compact (and each of the provisions of any Supplemental Agreement to which MCC is a party) shall be valid, binding and in full force and effect under the laws of El Salvador;

(ii) Attaches thereto, and certifies that such attachments are, true, correct and complete, copies of all decrees, legislation, regulations or other governmental documents relating to its domestic requirements for this Compact to enter into force and the satisfaction of Section 3.20, which MCC may post on its web site or otherwise make publicly available; and

(iii) (1) Certifies that the Asamblea Legislativa has passed the Law Creating FOMILENIO pursuant to Article III hereof, and that such law is in full force and effect in accordance with the laws of El Salvador, and (2) attaches thereto a copy of the Law Creating FOMILENIO, which MCC may post on its Web site or otherwise make publicly available.

(e) MCC shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative of MCC executing any document under this Compact such written statement to be signed by a duly authorized official of MCC other than the Principal Representative or any such Additional Representative.

(f) The Government has not engaged subsequent to the conclusion of this Compact in any action or omission inconsistent with the MCA Eligibility Criteria, as determined by MCC in its sole discretion.

Section 4.2 Conditions Precedent to MCC Disbursements or Re-Disbursements

Prior to, and as condition precedent to, any MCC Disbursement or Re-Disbursement, the Government shall satisfy, or ensure the satisfaction of, all applicable conditions precedent in the Disbursement Agreement.

Article V. Final Clauses

Section 5.1 Communications

Unless otherwise expressly stated in this Compact or otherwise agreed in writing by the Parties, any notice, certificate, request, report, document or other communication required, permitted, or submitted by either Party to the other under this Compact shall be: (a) In writing; (b) in English; and (c) deemed duly given: (i) Upon personal delivery to the Party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day; or (iii) three (3) business days after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC:

Millennium Challenge Corporation, Attention: Vice President for Operations (with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521–3700, Phone: (202) 521–3600, E-mail: *VPOperations@mcc.gov* (Vice President for Operations); *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel)

To the Government:

The Government of the Republic of El Salvador, Attention: Secretaría Técnica de la Presidencia, Casa Presidencial, Alameda Manuel Enrique Araujo #5500, San Salvador Republic of El Salvador, Facsimile: (503) 2248–9270, Phone: (503) 2248–9328, E-mail: *contactenos@mca.gob.sv*.

With a copy to FOMILENIO:

At an address, and to the attention of the person, to be designated in writing to MCC by the Government.

Notwithstanding the foregoing, any audit report delivered pursuant to Section 3.18, if delivered by facsimile or electronic mail, shall be followed by an original in overnight express mail. This Section 5.1 shall not apply to the exchange of letters contemplated in Section 1.3 or any amendments under Section 5.3.

Section 5.2 Representatives

Unless otherwise agreed in writing by the Parties, for all purposes relevant to this Compact, the Government shall be represented by the individual holding the position of, or acting as, Technical Secretary of the Presidency, and MCC shall be represented by the individual holding the position of, or acting as, Vice President for Operations (each, a ''Principal Representative''), each of whom, by written notice to the other Party, may designate one or more additional representatives (each, an ''Additional Representative'') for all purposes other than signing amendments to this Compact. The names of the Principal Representative and any Additional Representative of each of the Parties shall be provided, with specimen signatures, to the other Party, and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Compact, until receipt of written notice of revocation of their authority. A Party may change its Principal Representative to a new representative of equivalent or higher rank and may change any Additional Representative, in either case, upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative or Additional Representative, as applicable.

Section 5.3 Amendments

The Parties may amend this Compact only by a written agreement signed by the Principal Representatives of the Parties and subject to the respective domestic approval requirements to which this Compact was subject.

Section 5.4 Termination; Suspension

(a) Subject to Section 2.5, either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) Notwithstanding any other provision of this Compact, including Section 2.1, or any Supplemental Agreement, subject to Section 2.5, MCC may suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Government written notice, if MCC determines, in its sole discretion that:

(i) Any use or proposed use of MCC Funding or any other Program Asset or continued implementation of this Compact would be in violation of applicable law or United States Government policy, whether now or hereafter in effect;

(ii) The Government, any Provider, or any other third party receiving MCC Funding or using any Program Asset is engaged in activities that are contrary to the national security interests of the United States;

(iii) The Government or any Permitted Designee has committed an act or omission or an event has occurred that would render El Salvador ineligible to receive United States economic

assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(iv) The Government or any Permitted Designee has engaged in a pattern of actions or omissions inconsistent with the MCA Eligibility Criteria, or there has occurred a significant decline in the performance of the Republic of El Salvador on one or more of the eligibility indicators contained therein;

(v) The Government or any Provider has materially breached one or more of its assurances or any covenants, obligations or responsibilities under this Compact or any Supplemental Agreement;

(vi) An audit, review, report or any other document delivered in furtherance of this Compact or any Supplemental Agreement or any other evidence reveals that actual expenditures for the Program or any Project or any Project Activity were greater than the projected expenditure for such activities identified in the applicable Detailed Budget or are projected to be greater than projected expenditures for such activities;

(vii) If the Government (A) materially reallocates or reduces the allocation in its national budget or any other Government budget of the normal and expected resources that the Government would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein; (B) fails to contribute or provide the amount, level, type and quality of resources required effectively to carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact; or (C) fails to pay any of its obligations as required under this Compact or any Supplemental Agreement, including such obligations which shall be paid solely out of national funds;

(viii) If the Government, any Provider, or any other third party receiving MCC Funding or using any other Program Asset, or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(ix) Any MCC Funding or Program Assets are applied (directly or indirectly) to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution;

(x) An event or condition of any character has occurred that: (A) materially and adversely affects, or is likely to materially and adversely affect, the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or otherwise to carry out its responsibilities or obligations under or in furtherance of this Compact or any Supplemental Agreement or to perform its obligations under or in furtherance of this Compact or any Supplemental Agreement or to exercise its rights thereunder; (B) makes it improbable that any of the Objectives will be achieved during the Compact Term; (C) materially and adversely affects any Program Asset or any Permitted Account; or (D) constitutes misconduct injurious to MCC, or constitutes a fraud or a felony, by the Government, any Government Affiliate, Permitted Designee or Provider, or any officer, director, employee, agent, representative, Affiliate, contractor, grantee, subcontractor or sub-grantee of any of the foregoing;

(xi) The Government, any Permitted Designee or any Provider has taken any action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of this Compact or any Supplemental Agreement to which the Government or any Permitted Designee or Provider is a party;

(xii) There has occurred a failure to meet a condition precedent or series of conditions precedent or any other requirements or conditions in connection with MCC Disbursement as set out in and in accordance with any Supplemental Agreement; or

(xiii) Any MCC Funding, Accrued Interest or other Program Asset becomes subject to a Lien without the prior approval of MCC, and the Government fails to obtain the release of such Lien (utilizing national funds and not with MCC Funding, Accrued Interest or any other Program Asset) within thirty (30) days after the imposition of such Lien.

(c) MCC may reinstate any suspended or terminated MCC Funding under this Compact or any Supplemental Agreement if MCC determines, in its sole discretion that the Government or other relevant party has demonstrated a commitment to correcting each condition for which MCC Funding was suspended or terminated.

(d) The authority under this Section 5.4 to suspend or terminate this Compact or any MCC Funding includes the authority to suspend or terminate any obligations or sub-obligations relating to MCC Funding under any Supplemental Agreement without any liability to MCC whatsoever.

(e) All MCC Disbursements and Re-Disbursements shall cease upon expiration, suspension, or termination of this Compact; *provided, however,* (i) reasonable expenditures for goods, services and works that are properly incurred under or in furtherance of this Compact before such expiration, suspension or termination of this Compact, and (ii) reasonable expenditures for goods and services (including certain administrative expenses) properly incurred in connection with the winding up of the Program within one hundred and twenty (120) days after such expiration, suspension or termination of this Compact may be paid from MCC Funding if (A) the request for such payment is properly submitted within ninety (90) days after such expiration, suspension or termination of this Compact, and (B) MCC had approved the making of such expenditure in writing in advance thereof.

(f) Other than the payments permitted pursuant to Section 5.4(e), in the event of the suspension or termination of this Compact or any Supplemental Agreement, in whole or in part, the Government, shall suspend, at MCC's sole discretion, for the period of the suspension, or terminate, or ensure the suspension or termination of, as applicable, any obligation or sub-obligation of the Parties to provide financial or other resources under this Compact or any Supplemental Agreement, or to the suspended or terminated portion of this Compact or such Supplemental Agreement, as applicable. In the event of such suspension or termination, the Government shall use its best efforts to suspend or terminate, or ensure the suspension or termination of, as applicable, all such noncancelable commitments related to the suspended or terminated MCC Funding. Any portion of this Compact or any such Supplemental Agreement that is not suspended or terminated shall remain in full force and effect.

(g) Upon the full or partial suspension or termination of this Compact or any MCC Funding, MCC may, at its expense, direct that title to any Program Assets be transferred to MCC if such Program Assets are in a deliverable state; *provided, however,* for any Program Asset partially purchased or funded (directly or indirectly) by MCC Funding, the Government shall reimburse to a United States Government account designated by MCC the cash equivalent of the portion of the value of such Program Asset, such value as determined by MCC.

(h) Prior to the expiration of this Compact or upon the termination of this Compact, the Parties shall consult in good faith with a view to reaching an agreement in writing on (i) the post-Compact Term treatment of FOMILENIO, (ii) the process for ensuring the refunds of MCC Disbursements that have not yet been released from a Permitted Account through a valid Re-Disbursement or otherwise committed in accordance with Section 5.4(e), and (iii) any other matter related to the winding up of the Program and this Compact.

Section 5.5 Privileges and Immunities

MCC is an agency of the Government of the United States of America and its personnel assigned to the Republic of El Salvador will be notified pursuant to the Vienna Convention on Diplomatic Relations as members of the mission of the Embassy of the United States of America. The Government shall ensure that any personnel of MCC so notified, including individuals detailed to or contracted by MCC, and the members of the families of such personnel, while such personnel are performing duties in the Republic of El Salvador, shall enjoy the privileges and immunities that are enjoyed by a member of the United States Foreign Service, or the family of a member of the United States Foreign Service so notified, as appropriate, of comparable rank and salary of such personnel, if such personnel or the members of the families of such personnel are not a national of, or permanently resident in the Republic of El Salvador.

Section 5.6 Attachments

Any annex, schedule, exhibit, table, appendix or other attachment expressly attached hereto (collectively, the ''Attachments'') is incorporated herein by reference and shall constitute an integral part of this Compact.

Section 5.7 Inconsistencies

(a) Conflicts or inconsistencies between any parts of this Compact shall be resolved by applying the following descending order of precedence:

(i) Articles I through V; and

(ii) Any Attachments.

(b) In the event of any conflict or inconsistency between this Compact and any Supplemental Agreement, the terms of this Compact shall prevail. In the event of any conflict or inconsistency between any Supplemental Agreement between the Parties and any other Supplemental Agreement, the terms of the Supplemental Agreement between the Parties shall prevail. In the event of any conflict or inconsistency between Supplemental Agreements between any parties, the terms of a more recently executed Supplemental Agreement shall take precedence over a previously executed Supplemental Agreement. In the event of any inconsistency between a Supplemental Agreement and any component of the Implementation Documents, the terms of the relevant Supplemental Agreement shall prevail.

Section 5.8 Indemnification

The Government shall indemnify and hold MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative (each of MCC and any such persons, an ''MCC Indemnified Party'') harmless from and against, and shall compensate, reimburse and pay such MCC Indemnified Party for, any liability or other damages which (a) are (directly or indirectly) suffered or incurred by such MCC Indemnified Party, or to which any MCC Indemnified Party may otherwise become subject, regardless of whether or not such damages relate to any third-party claim, and (b) arise from or as a result of the negligence or willful misconduct of the Government, any Government Affiliate, FOMILENIO or any Permitted Designee, (directly or indirectly) connected with, any activities (including acts or omissions) undertaken in furtherance of this Compact; provided, however, the Government shall apply national funds to satisfy its obligations under this Section 5.8 and no MCC Funding, Accrued Interest, or other Program Asset may be applied by the Government in satisfaction of its obligations under this Section 5.8.

Section 5.9 Headings

The Section and Subsection headings used in this Compact are included for convenience only and are not to be considered in construing or interpreting this Compact.

Section 5.10 Interpretation

(a) Any reference to the term ''including'' in this Compact shall be deemed to mean ''including without limitation'' except as expressly provided otherwise.

(b) Any reference to activities undertaken ''in furtherance of this Compact'' or similar language shall include activities undertaken by the Government, any Government Affiliate, FOMILENIO, any Permitted Designee, any Provider or any other third party receiving MCC Funding involved in carrying out the purposes of this Compact or any Supplemental Agreement, including their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, whether pursuant to the terms of this Compact, any Supplemental Agreement or otherwise.

(c) References to ''day'' or ''days'' shall be calendar days unless provided otherwise.

(d) Defined terms importing the singular also include the plural, and vice versa.

Section 5.11 Signatures

A signature to this Compact or an amendment to this Compact pursuant to Section 5.3 shall be delivered only as an original signature. With respect to all other signatures, a signature delivered by facsimile or electronic mail in accordance with Section 5.1 shall be deemed an original signature and shall be binding on the Party delivering such signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Without limiting the foregoing, a signature on an audit report or a signature evidencing any modification identified in Section 2(a) and Section 4(a)(iv) of Annex I, Section 4 of Annex II, or Section 5(d) of Annex III shall be followed by an original in overnight express mail.

Section 5.12 Designation

MCC may designate any Affiliate, agent, or representative to implement, in whole or in part, its obligations, and exercise any of its rights, under this Compact or any Supplemental Agreement. MCC shall inform the Government of any such designation.

Section 5.13 Survival

Any Government Responsibilities, covenants, or obligations or other responsibilities to be performed by the Government after the Compact Term shall survive the termination or expiration of this Compact and expire in accordance with their respective terms. Notwithstanding the termination or expiration of this Compact, the following provisions shall remain in force: Sections 2.2, 2.3, 2.5, 3.2 to 3.9 (the expiration of which shall be governed by the Law Creating FOMILENIO and the Reglamento), 3.12, 3.13, 3.14, 3.15, 3.18, 3.19 (for one year), 3.22, 5.1, 5.2, 5.4(d), 5.4(e) (for one-hundred and twenty (120) days), 5.4(f), 5.4(g), 5.4(h), 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, this Section 5.13, 5.14, and 5.15.

Section 5.14 Consultation

Either Party may, at any time, request consultations relating to the interpretation or implementation of this Compact or any Supplemental Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Party shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within twenty (20) days from the commencement of the consultations, then each Party shall forward the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than forty-five (45) days from date of commencement. If the matter is not resolved within such time period, either Party may terminate this Compact pursuant to Section 5.4(a). The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner and by the principles of international law. Any dispute arising under or related to this Compact shall be determined exclusively through the consultation mechanism set forth in this Section 5.14.

Section 5.15 MCC Status

MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of this Compact. As such, MCC has no liability under this Compact and is immune from any action or proceeding arising under or relating to this Compact, and the Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, MCC is not subject to the jurisdiction of the courts or other body of the Republic of El Salvador or any other jurisdiction and all disputes arising under or relating to this Compact shall be determined in accordance with Section 5.14.

Section 5.16 Language

This Compact is prepared in English and in Spanish and both versions shall have equal validity.

Section 5.17 Publicity; Information and Marking

The Government shall give appropriate publicity to this Compact as a program to which the United States, through MCC, has contributed, including by posting this Compact, and any amendments thereto, on the Web site operated by FOMILENIO (the ''FOMILENIO Web site''), identifying Program activity sites, and marking Program Assets; *provided, however,* any announcement, press release or statement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, including the publicity described in this Section 5.17, shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters. Upon the termination or expiration of this Compact, MCC may request the removal of, and the Government shall, upon such request, remove, or cause the removal of, any such markings and any references to MCC in any publicity materials or on the FOMILENIO Web site. MCC may post this Compact, and any amendments thereto, on the web site of MCC. MCC shall have the right to use any information or data provided in any report or document provided to MCC for the purpose of satisfying MCC reporting requirements or in any other manner.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact this 29th day of November, 2006 and this Compact shall enter into force in accordance with Section 1.3.

Done at Washington, D.C. in English and Spanish.

For the United States of America, acting through the Millennium Challenge Corporation, Name: John J. Danilovich, Title: Chief Executive Officer.

For the Government of the Republic of El Salvador, Name: Eduardo Zablah Touche, Title: Technical Secretary to the Presidency of the Republic of El Salvador.

Exhibit A—Definitions

The following compendium of capitalized terms that are used in this Compact is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Exhibit A and the definitions elsewhere in the text of this Compact, the definition elsewhere in this Compact shall prevail over the definition in this Exhibit A.

Accrued Interest shall have the meaning set forth in Section 2.1(c).

Act shall have the meaning set forth in Section 2.1(a)(iii).

Ad Hoc Evaluation shall have the meaning set forth in Section 3(b) of Annex III.

Additional Representative shall have the meaning set forth in Section 5.2.

Advisory Council shall have the meaning set forth in Section 3.4(b).

Affiliate means the affiliate of a party, which is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence. References to Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Asamblea Legislativa shall have the meaning set forth in Section 3.7.

Attachments shall have the meaning set forth in Section 5.6.

Audit Guidelines shall have the meaning set forth in Section 3.18(d)(i).

Audit Plan shall have the meaning set forth in Section 3.18(d)(iii).

Auditor shall have the meaning set forth in Section 3(h) of Annex I.

Auditor/Reviewer Agreement shall have the meaning set forth in Section 3(h) of Annex I.

Bank means any bank holding a Permitted Account.

Bank Agreement shall have the meaning set forth in Section 4(d) of Annex I.

Beneficiaries shall have the meaning set forth in Section 2(a) of Annex III.

Bilateral Agreement shall have the meaning set forth in Section 2.6.

BMI shall have the meaning set forth in Section 2 of Schedule 2 to Annex I.

Board shall have the meaning set forth in Section 3.4(a).

Chair shall have the meaning set forth in Section 3.5(b).

Chalatenango Center shall have the meaning set forth in Section 2(a)(ii)(1) of Schedule 1 to Annex I.

Civil Members shall have the meaning set forth in Section 3(d)(ii)(2)(A) of Annex I.

Civil Society Stakeholders shall have the meaning set forth in Section 3(e)(iv) of Annex I.

CND shall have the meaning set forth in Section 1(a) of Annex I.

Compact shall have the meaning set forth in the Preamble.

Compact Goal shall have the meaning set forth in Section 1.1.

Compact Implementation Funding shall have the meaning set forth in Section 2.1(a)(iii).

Compact Records shall have the meaning set forth in Section 3.18(b).

Compact Reports shall have the meaning set forth in Section 3(d)(ii)(3)(C) of Annex I.

Compact Term shall have the meaning set forth in Section 1.3.

Community Development Activity shall have the meaning set forth in Section 2(b) of Schedule 1 to Annex I.

Community Infrastructure Sub-Activity shall have the meaning set forth in Section 2(b)(iii) of Schedule 1 to Annex I.

Connecting Roads Activity shall have the meaning set forth in Section 2(b) of Schedule 3 to Annex I.

Connectivity Objective shall have the meaning set forth in Section 1.1(c).

Connectivity Project shall have the meaning set forth in the Preamble of Schedule 3 to Annex I.

Covered Provider shall have the meaning set forth in Section 3.18(d)(iv).

DCA shall have the meaning set forth in Section 5 of Schedule 2 to Annex I.

Designated Rights and Responsibilities shall have the meaning set forth in Section 3.12(c).

Detailed Budget shall have the meaning set forth in Section 4(a)(ii) of Annex I.

DIGESTYC shall have the meaning set forth in Section 2(a) of Annex III.

Disbursement Agreement shall have the meaning set forth Section 2.1(b)(i).

Education and Training Activity shall have the meaning set forth in Section 2(a) of Schedule 1 to Annex I.

Education and Training Advisory Committee shall have the meaning set forth in Section 2(a) of Schedule 1 to Annex I.

EHPM shall have the meaning set forth in Section 2(b) of Annex III.

EIA shall have the meaning set forth in Section 6(b) of Annex I.

EMP shall have the meaning set forth in Section 6(b) of Annex I.

Entry into Force shall have the meaning set forth in Section 1.3.

Environmental Guidelines shall have the meaning set forth in Section 2.3(d).

Evaluation Component shall have the meaning set forth in Section 1 of Annex III.

Executive Decree means an executive decree issued by the President of El Salvador.

Executive Director shall have the meaning set forth in Section 3.6.

Exempt Uses shall have the meaning set forth in Section 2.3(e)(ii).

Final Evaluation shall have the meaning set forth in Section 3(a) of Annex III.

Financial Plan means collectively, the Multi-Year Financial Plan, each Detailed Budget and each amendment, supplement or other change thereto.

Financial Plan Annex shall have the meaning set forth in the Preamble of Annex II.

Financial Services Activity shall have the meaning set forth in Section 2(c) of Schedule 2 to Annex I.

Fiscal Accountability Plan shall have the meaning set forth in Section 4(c) of Annex I.

Fiscal Agent shall have the meaning set forth in Section 3(g)(i) of Annex I.

Fiscal Agent Agreement shall have the meaning set forth in Section 3(g)(i) of Annex I.

Fiscal Oversight Agent shall have the meaning set forth in Section 3(g)(ii) of Annex I.

Fiscal Oversight Agreement shall have the meaning set forth in Section 3(g)(ii) of Annex I.

FISDL shall have the meaning set forth in Section 2(b)(i) of Schedule 1 to Annex I.

FOMILENIO shall have the meaning set forth in the Recitals.

FOMILENIO Web site shall have the meaning set forth in Section 5.17.

Formal Technical Education Sub-Activity shall have the meaning set forth in Section 2(a)(ii) of Schedule 1 to Annex I.

FOVIAL shall have the meaning set forth in Section 6 of Schedule 3 to Annex I.

GDP means gross domestic product.

Goal Indicator shall have the meaning set forth in Section 2(a) of Annex III.

Governing Documents shall have the meaning set forth in Section 3(d)(i) of Annex I.

Government shall have the meaning set forth in the Preamble.

Government Affiliate means an Affiliate, ministry, bureau, department, agency, government corporation or any other entity chartered or established by the Government or any local government in El Salvador. References to Government Affiliate shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Government Members shall have the meaning set forth in Section 3(d)(ii)(2)(A) of Annex I.

Government Party shall have the meaning set forth in Section 3.18(e)(i).

Government Responsibilities shall have the meaning set forth in Section 3.12(a).

Human Development Objective shall have the meaning set forth in Section 1.1(a).

Human Development Project shall have the meaning set forth in the Preamble of Schedule 1 to Annex I.

IADB shall have the meaning set forth in Section 4 of Schedule 1 to Annex I.

Implementation Document shall have the meaning set forth in Section 3(a) of Annex I.

Implementation Letter shall have the meaning set forth in Section 3.15(a).

Implementing Entity shall have the meaning set forth in Section 3(f) of Annex I.

Implementing Entity Agreement shall have the meaning set forth in Section 3(f) of Annex I.

Indicators shall have the meaning set forth in Section 2(a) of Annex III.

Inspector General shall have the meaning set forth in Section 3.18(d)(i).

Investment Support Activity shall have the meaning set forth in Section 2(b) of Schedule 2 to Annex I.

Law Creating FOMILENIO shall have the meaning set forth in Section 3.1.

Lien shall have the meaning set forth in Section 2.3(g).

Local Account shall have the meaning set forth in Section 4(d)(ii) of Annex I.

M&E shall have the meaning set forth in Section 3 of Annex I.

M&E Annex shall have the meaning set forth in the Preamble of Annex III.

M&E Plan shall have the meaning set forth in Section 2(d) of Annex I.

Management shall have the meaning set forth in Section 3.4(a).

MARN shall have the meaning set forth in Section 6(d) of Annex I.

MARN Program Requirements shall have the meaning set forth in Section 6(g) of Annex I.

Material Agreement shall have the meaning set forth in Section 3(c)(i)(4) of Annex I.

Material Re-Disbursement shall have the meaning set forth in Section 3(c)(i)(7) of Annex I.

MCA shall have the meaning set forth in the Recitals.

MCA Eligibility Criteria shall have the meaning set forth in Section 3.17.

MCC shall have the meaning set forth in the Preamble.

MCC Disbursement shall have the meaning set forth in Section 2.1(b)(i).

MCC Disbursement Request shall have the meaning set forth in Section 4(b) of Annex I.

MCC Funding shall have the meaning set forth in Section 2.1(a).

MCC Indemnified Party shall have the meaning set forth in Section 5.8.

MCC Representative shall have the meaning set forth in Section 3.5(e).

MEGATEC shall have the meaning set forth in Section 2(a) of Annex III.

Monitoring Component shall have the meaning set forth in Section 1 of Annex III.

MOP shall have the meaning set forth in Section 4 of Schedule 3 to Annex I.

Multi-Year Financial Plan shall have the meaning set forth in Section 4(a)(i) of Annex I.

Multi-Year Financial Plan Summary shall have the meaning set forth in Section 1 of Annex II.

Network of Connecting Roads or NCR shall have the meaning set forth in Section 2 of Schedule 3 to Annex I.

NGOs means non-governmental organizations.

Non-Formal Skills Development Sub-Activity shall have the meaning set forth in Section 2(a)(iii) of Schedule 1 to Annex I.

Northern Transnational Highway or NTH shall have the meaning set forth in Section 2 of Schedule 3 to Annex I.

Northern Transnational Highway Activity shall have the meaning set forth in Section 2(a) of Schedule 3 to Annex I.

Northern Zone shall have the meaning set forth in the Recitals.

Northern Zone Investment Plan shall have the meaning set forth in Section 1(a) of Annex I.

O&M shall have the meaning set forth in Section 2(b)(i) of Schedule 1 to Annex I.

Objective Indicator shall have the meaning set forth in Section 2(a) of Annex III.

Objectives shall have the meaning set forth in Section 1.1.

Observer shall have the meaning set forth in Section 3.5(e).

Officer shall have the meaning set forth in Section 3(d)(iii)(1) of Annex I.

Outcome Indicator shall have the meaning set forth in Section 2(a) of Annex III.

Outcomes shall have the meaning set forth in Section 1 of Annex III.

Output Indicator shall have the meaning set forth in Section 2(a) of Annex III.

Party or Parties shall have the meaning set forth in the Preamble.

PD Investment Committee shall have the meaning set forth in Section 2 of Schedule 2 to Annex I.

PD Operations Manual shall have the meaning set forth in Section 2 of Schedule 2 to Annex I.

Permitted Account(s) shall have the meaning set forth in Section 4(d) of Annex I.

Permitted Designee shall have the meaning set forth in Section 3.12(c).

Plan of the Nation shall have the meaning set forth in Section 1(a) of Annex I.

Pledge shall have the meaning set forth in Section 3(c)(i)(8) of Annex I.

Principal Representative shall have the meaning set forth in Section 5.2.

Procurement Agent shall have the meaning set forth in Section 3(i) of Annex I.

Procurement Agent Agreement shall have the meaning set forth in Section 3(i) of Annex I.

Procurement Guidelines shall have the meaning set forth in Section 3.16(a).

Procurement Plan shall have the meaning set forth in Section 3(i) of Annex I.

Production and Business Services Activity shall have the meaning set forth in Section 2(a) of Schedule 2 to Annex I.

Productive Development Objective shall have the meaning set forth in Section 1.1(b).

Productive Development Project shall have the meaning set forth in the Preamble of Schedule 2 to Annex I.

PROGARA shall have the meaning set forth in Section 2(c)(i)(1) of Schedule 2 to Annex I.

Program shall have the meaning set forth in the Recitals.

Program Annex shall have the meaning set forth in the Preamble of Annex I.

Program Assets shall have the meaning set forth in Section 2.3(e)(iii).

Project shall have the meaning set forth in Section 1.2.

Project Activity shall have the meaning set forth in Section 2(a) of Annex I.

PRONORTE Service Providers shall have the meaning set forth in Section 2(a) of Schedule 2 to Annex I.

Proposal shall have the meaning set forth in the Recitals.

Provider shall have the meaning set forth in Section 2.4(b).

Publication Period (Vacatio Legis) means the period of time commencing on the date of publication of the Compact in the Official Gazette of El Salvador and terminating on the eighth day thereafter.

RAP shall have the meaning set forth in Section 6(b) of Annex I.

Re-Disbursement shall have the meaning set forth in Section 2.1(b)(ii).

Reglamento shall have the meaning set forth in Section 3.10.

Reviewer shall have the meaning set forth in Section 3(h) of Annex I.

Rural Electrification Sub-Activity shall have the meaning set forth in Section 2(b)(ii) of Schedule 1 to Annex I.

SEA shall have the meaning set forth in Section 6(a) of Annex I.

SGR shall have the meaning set forth in Section 2(c)(i)(2) of Schedule 2 to Annex I.

SIGET shall have the meaning set forth in Section 6 of Schedule 1 to Annex I.

SINAMA shall have the meaning set forth in Section 6(f) of Annex I.

Special Account shall have the meaning set forth in Section 4(d)(i) of Annex I.

Supplemental Agreement shall have the meaning set forth in Section 3.15(b).

Supplemental Agreement between the Parties means any agreement between MCC on the one hand, and the Government, any Government Affiliate or any Permitted Designee on the other hand.

Supplemental Agreement Term Sheets shall have the meaning set forth in Section 4.1(b).

Target shall have the meaning set forth in Section 2(a) of Annex III.

Tax(es) shall have the meaning set forth in Section 2.3(e)(i).

Technical Assistance Sub-Activity shall have the meaning set forth in Section 2(a)(i) of Schedule 1 to Annex I.

UFI shall have the meaning set forth in Section 3(g)(i) of Annex I.

USAID means the United States Agency for International Development.

United States Dollars (US$ or $) shall have the meaning set forth in Section 2.1(d).

United States Government means any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

VAT shall have the meaning set forth in Section 2.3(e)(i)(4).

Voting Members shall have the meaning set forth in Section 3(d)(ii)(2)(A) of Annex I.

Water and Sanitation Sub-Activity shall have the meaning set forth in Section 2(b)(i) of Schedule 1 to Annex I.

Work Plan shall have the meaning set forth in Section 3(a) of Annex I.

Exhibit B—List of Certain Supplemental Agreements

1. Procurement Agent Agreement.
2. Implementing Entity Agreements.
3. Bank Agreements.
4. Fiscal Oversight Agreement.

Schedule 2.1(a)(iii)—Description of Compact Implementation Funding

Compact Implementation Funding

The Compact Implementation Funding provided pursuant to Section 2.1(a)(iii) shall support the following activities and expenditures in an amount not to exceed the amount specified in Section 2.1(a)(iii):

(a) Payments for reasonable and normal staff salaries and administrative expenses of FOMILENIO (or mutually acceptable Government Affiliate) such as rent, equipment, information technology expenses and furniture;

(b) Conduct fiscal and procurement administration activities;

(c) A gender assessment in connection with the Human Development Project under Section 2(a) of Schedule 1 to Annex I;

(d) Any design and supplemental environmental assessment (EIA, EMP or RAP studies) determined necessary by MCC in connection with the Connectivity Project;

(e) Data collection in connection with M&E activities; and

(f) Other Compact implementation expenses approved by MCC.

Annex I—Program Description

This Annex I to the Compact (this ''Program Annex'') generally describes the Program that MCC Funding will support in El Salvador during the Compact Term and the results to be achieved from the investment of MCC Funding. Prior to any MCC Disbursement or Re-Disbursement, including for the Projects described herein, MCC, the Government (or a mutually acceptable Government Affiliate) and FOMILENIO shall enter into the Disbursement Agreement, which agreement shall be in form and substance mutually satisfactory to the Parties, and signed by the Principal Representative of each Party (or in the case of a Government Affiliate, the principal representative of such Government Affiliate) and of FOMILENIO.

Except as specifically provided herein, the Parties may amend this Program Annex only by written agreement signed by the Principal Representative of each Party. Each capitalized term used but not defined in this Program Annex shall have the same meaning given such term elsewhere in this Compact. Unless otherwise expressly stated, each Section reference herein is to the relevant Section of the main body of this Compact.

1. Background; Consultative Process

(a) Background. Located in Central America, bordering the North Pacific Ocean, between Guatemala and Honduras, El Salvador is a country of approximately 6.9 million people. Approximately 35 percent of its population lives in poverty, with a high incidence of extreme poverty in rural areas. El Salvador's civil conflict of the 1980s cost the lives of over 70,000 Salvadorans and destroyed much of the country's infrastructure. The rural areas, particularly in the northern region of the country, were most affected. During those war years, human capital formation lagged, GDP declined, public investment was deferred, deterioration of the natural resource base accelerated, and migration to the United States increased. By the end of the 1980s, about two-thirds of the Salvadoran population was living in poverty. In 1989, a new government embarked on a major stabilization and structural adjustment program and initiated peace negotiations, reaching a Peace Accord in early 1992. El Salvador has made substantial progress in improving its economic and social conditions and building its democratic institutions in the last 20 years; nonetheless, a significant portion of its population remains in poverty, without access to good jobs or basic social services, and continuing environmental deterioration poses risks for sustainable development.

The Program focuses on the Northern Zone, a region that includes one-half of El Salvador's poorest municipalities, that suffered more than any other from the 1980s civil conflict, and that has substantial unrealized potential for sustainable development. The Northern Zone is also an important source of water, energy, biodiversity and environmental resources of El Salvador and Central America. The Objectives were designed to advance El Salvador's fulfillment of the broadly shared aspiration to unite the northern third of the national territory with the rest of the country and lift this isolated region's people out of poverty.

During the past eight years, the non-partisan Commission for National Development (''CND'') has been leading a public dialogue on a new vision for El Salvador's development. CND was created by an Executive Decree in 1996, to foster such a new vision through a process of citizen participation. CND has produced a shared national development strategy setting forth a vision for development of each of the five regions of El Salvador, including the Northern Zone (the ''Plan of the Nation''). In response to the Plan of the Nation and based on consultation with local governments, private enterprise and civil society, the Government developed a plan for developing the Northern Zone (the ''Northern Zone Investment Plan''), encompassing three major themes: (i) Strengthening human development; (ii) developing productive potential; and (iii) increasing physical connectivity. These three themes formulated the basis for the Proposal, with MCC Funding comprising a major portion of the funds necessary to achieve the goals of the Northern Zone Investment Plan.

(b) Consultative Process. The Government's broad development strategy for the Northern Zone and the Northern Zone Investment Plan were a direct result of the extensive consultation process led by CND while developing the Plan of the Nation. To develop their Proposal, the Government refined the Northern Zone Investment Plan based on input received in a series of consultations with various stakeholders and interested parties, both within the Northern Zone and throughout the country, including with local mayors, private sector representatives, academic experts, international donors, multilateral development organizations, sector specialists and the general public. Building on the strong record of public participation in national development planning, CND utilized five different approaches to ensure fulfillment of MCC's requirements for a publicly-driven and widely-consulted development program: (i) General—town hall meetings held in major cities around the nation; (ii) Specialized—roundtable discussions with experts on gender, environment, connectivity, and other key topics; (iii) Territorial—consultations with municipal officials, community leaders, small producers, local NGOs, and other residents of the northern corridor of El Salvador; (iv) Interest Groups—consultations with private sector representatives, women, Salvadorans abroad, and entrepreneurs; and (v) Institutional—consultations with mayors, government officials, NGOs, and international cooperation agencies.

The MCC-specific consultative process began in January 2006, and included more than 50 formal workshops and informal discussions with over 2,200 Salvadorans. The comments, concerns and suggestions of participants in these consultations are documented in the ''Final Report on the Consultative Process'' prepared by CND (available on the FOMILENIO Web site).

The Government's consultative efforts regarding the Program are ongoing and will continue throughout the Compact Term. CND is responsible for executing the Government's consultation plan, which includes both formal and informal interaction with various stakeholders and interested parties, both within the Northern Zone and throughout the rest of the country. Following submission of the Proposal to MCC, the Government, with the assistance of CND, engaged in outreach efforts focused on disseminating information on Program goals and objectives and on the implementation process. Such outreach efforts are undertaken through consultation events as well as through the FOMILENIO Web site. Participants in such consultations are encouraged to remain actively engaged in oversight and implementation of the Program by defining their roles and responsibilities as stakeholders and coordinating a long-term schedule for future interaction.

2. Overview

(a) Projects. The Parties have identified the interrelated, component Projects that the Government will implement, or cause to be implemented,

using MCC Funding to advance each Objective and the Compact Goal. Each component Project is generally described in the Schedules to this Program Annex. The Schedules to this Program Annex also identify one or more of the activities that will be undertaken in furtherance of each Project (each, a ''Project Activity'') as well as the various activities within each Project Activity. Notwithstanding anything to the contrary in this Compact, the Parties may agree to modify, amend, terminate or suspend these Projects or to create a new project by written agreement signed by the Principal Representative of each Party without amending this Compact; provided, however, any such modification or amendment of a Project or creation of a new project shall (i) be consistent with the Objectives; (ii) not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1 of this Compact; (iii) not cause the Government's responsibilities or contribution of resources to be less than specified in Section 2.2 of this Compact or elsewhere in this Compact; and (iv) not extend the Compact Term.

(b) Beneficiaries. The intended beneficiaries of each Project are described in the respective Schedule to this Program Annex and Annex III to the extent identified as of the date hereof. The intended beneficiaries shall be identified more precisely during the initial phases of implementation of the Program. The Government shall provide to MCC information on the population of the areas in which the Projects will be active, disaggregated by gender, income level and age. The Parties shall agree upon the description of the intended beneficiaries and the Parties will make publicly available a more detailed description of the intended beneficiaries of the Program, including publishing such description on the FOMILENIO Web site.

(c) Civil Society. Civil society shall participate in overseeing the implementation of the Program through its representation on the Board and the Advisory Council, as provided in Section 3(d) and Section 3(e), respectively, of this Program Annex. In addition, ongoing consultations with civil society regarding the manner in which each Project is being implemented will take place throughout the Compact Term.

(d) Monitoring and Evaluation. Annex III generally describes the plan to measure and evaluate progress toward achievement of the Compact Goal and the Objectives (the ''M&E Plan''). As outlined in the Disbursement Agreement and other Supplemental Agreements, continued disbursement of MCC Funding under this Compact (whether as MCC Disbursements or Re-Disbursements) shall be contingent on, among other things, successful achievement of certain Targets as set forth in the M&E Plan.

3. Implementation Framework

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring and evaluation (''M&E'') and fiscal accountability for the use of MCC Funding is summarized below and in the Schedules attached to this Program Annex, and as may otherwise be agreed in writing by the Parties.

(a) General. The elements of the implementation framework will be further described in the Supplemental Agreements and in a set of detailed documents for the implementation of the Program, consisting of (i) a Multi-Year Financial Plan, (ii) a Fiscal Accountability Plan, (iii) a Procurement Plan, (iv) an M&E Plan, and (v) a Work Plan (each, an ''Implementation Document''). FOMILENIO shall adopt each Implementation Document in accordance with the requirements and timeframe as may be specified in this Program Annex, Annex II, Annex III, the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time. FOMILENIO may amend any Implementation Document without amending this Compact, *provided, however,* that any material amendment of such Implementation Document has been previously approved by MCC and is otherwise consistent with the requirements of this Compact and any Supplemental Agreement. By such time as may be specified in the Disbursement Agreement, or as may otherwise be agreed by the Parties from time to time, FOMILENIO shall adopt a work plan for the overall administration of the Program (the ''Work Plan''). The Work Plan shall set forth, with respect to (i) the administration of the Program, (ii) the monitoring and evaluation of the Program, and (iii) the implementation of each Project, the following: (1) Each activity to be undertaken or funded by MCC Funding (to the level of detail mutually acceptable to FOMILENIO and MCC), (2) the Detailed Budget, and (3) where appropriate, the allocation of roles and responsibilities for specific activities, other programmatic guidelines, performance requirements, targets, and other expectations related thereto.

(b) Government.

(i) The Government shall promptly take all necessary and appropriate actions to carry out the Government Responsibilities and other obligations or responsibilities of the Government under and in furtherance of this Compact, including undertaking or pursuing such legal, legislative or regulatory actions or procedural changes and contractual arrangements as may be necessary or appropriate to achieve the Objectives, to successfully implement the Program, to designate any rights or responsibilities to any Permitted Designee, to approve and promulgate the Law Creating FOMILENIO and to promulgate the Reglamento. FOMILENIO shall be a Permitted Designee and shall be responsible for the oversight and management of the implementation of this Compact on behalf of the Government. The Government shall promptly deliver to MCC certified copies of any documents, orders, decrees, laws or regulations evidencing such legal, legislative, regulatory, procedural, contractual or other actions.

(ii) The Government shall ensure that FOMILENIO is duly authorized and organized, sufficiently staffed and empowered to carry out fully the Designated Rights and Responsibilities. Without limiting the generality of the preceding sentence, FOMILENIO shall be organized, and have such roles and responsibilities, as described in Section 3(d) of this Program Annex and Sections 3.1 to 3.10 of this Compact and as provided in any other Governing Documents.

(c) MCC.

(i) Notwithstanding Section 3.11 of this Compact or any provision in this Program Annex to the contrary, and except as may be otherwise agreed upon by the Parties from time to time, MCC must approve in writing each of the following transactions, activities, agreements and documents prior to the execution or carrying out of such transaction, activity, agreement or document and prior to MCC Disbursements or Re-Disbursements in connection therewith:

(1) MCC Disbursements;

(2) Each Implementation Document (including each component thereto) and any material amendments and supplements thereto;

(3) Any Audit Plan;

(4) Agreements (i) between the Government and FOMILENIO; (ii) between the Government, a Government Affiliate, FOMILENIO or any other Permitted Designee, on the one hand, and any Provider or Affiliate of a Provider, on the other hand, which require such MCC approval under applicable law, the Disbursement Agreement, any Governing Document, or any other Supplemental Agreement;

or (iii) in which the Government, a Government Affiliate, FOMILENIO or any other Permitted Designee appoints, hires, or engages any of the following in furtherance of this Compact:

(A) Auditor;

(B) Reviewer;

(C) Fiscal Agent;

(D) Fiscal Oversight Agent;

(E) Procurement Agent;

(F) Bank;

(G) Implementing Entity; and

(H) A member of the Board (including any Observer), any Officer or any other key employee of FOMILENIO (including agreements involving the terms of any compensation for any such person).

(Any agreement described in clause (i) through (iii) of this Section 3(c)(i)(4) of this Program Annex and any amendments and supplements thereto, each, a ''Material Agreement'');

(5) Any material modification, termination or suspension of a Material Agreement, or any action that would have the effect of such a modification, termination or suspension of a Material Agreement;

(6) Any agreement that is (A) not at arm's length or (B) with a party related to the Government, FOMILENIO or any of their respective Affiliates;

(7) Any Re-Disbursement that requires such MCC approval under applicable law, any Governing Document, or any other Supplemental Agreement (each, a ''Material Re-Disbursement'');

(8) Any pledge of any MCC Funding or any Program Assets, or any guarantee, directly or indirectly, of any indebtedness (each, a ''Pledge'');

(9) Any Governing Document;

(10) Any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of (A) FOMILENIO, including any revocation or modification of or supplement to any Governing Document related thereto, or (B) any subsidiary or Affiliate of FOMILENIO;

(11) Any change in character or location of any Permitted Account;

(12) Formation or acquisition of any direct or indirect subsidiary, or other Affiliate, of FOMILENIO;

(13) (A) Any change of any member of the Board (including any Observer), of the member serving as the Chair or in the composition or size of the Board, and the filling of any vacant seat of any member of the Board (including any Observer), (B) any change of any Officer or other key employee of FOMILENIO (as determined by MCC) or in the composition or size of the Management, and the filling of any vacant position of any Officer or other key employee of FOMILENIO (as determined by MCC), and (C) any material change in the composition or size of the Advisory Council;

(14) Any decision by FOMILENIO to engage, to accept or to manage any funds from any donor agencies or organizations in addition to MCC Funding during the Compact Term;

(15) Any decision to amend, supplement, replace, terminate, or otherwise change any of the foregoing; and

(16) Any other activity, agreement, document or transaction requiring the approval of MCC in this Compact, applicable law, any Governing Document, the Disbursement Agreement, or any other Supplemental Agreement between the Parties.

(ii) MCC shall have the authority to exercise its approval rights set forth in this Section 3(c) of this Program Annex in its sole discretion and independent of any participation or position taken by the MCC Representative at a meeting of the Board. MCC retains the right to revoke its approval of any matter, agreement, or action if MCC concludes, in its sole discretion, that its approval was issued on the basis of incomplete, inaccurate or misleading information furnished by the Government, any Government Affiliate, FOMILENIO or any other Permitted Designee. Notwithstanding any provision in this Compact or any Supplemental Agreement to the contrary, the exercise by MCC of its approval or no-objection rights under this Compact or any Supplemental Agreement shall not (A) diminish or otherwise affect the Government Responsibilities or any other obligations or responsibilities of the Government under this Compact or any Supplemental Agreement, (B) transfer any such obligations or responsibilities of the Government, or (C) otherwise subject MCC to any liability.

(d) FOMILENIO.

(i) General. FOMILENIO shall, as a Permitted Designee, be responsible for the oversight and management of the implementation of this Compact. FOMILENIO shall be governed by the provisions of this Compact, the Law Creating FOMILENIO, the Reglamento, and any other decree, legislation or regulation governing FOMILENIO (collectively, the ''Governing Documents'') and by applicable law. Each Governing Document shall be in form and substance satisfactory to MCC and the Government and based on the following principles:

(1) The Government shall ensure that FOMILENIO shall not assign, delegate or contract any of the Designated Rights and Responsibilities without the prior written consent of the Government and MCC. FOMILENIO shall not establish any Affiliates or subsidiaries (direct or indirect) without the prior written consent of the Government and MCC.

(2) Unless otherwise agreed by the Parties in writing, FOMILENIO shall consist of (A) a board of directors to oversee FOMILENIO's responsibilities and obligations under this Compact (including any Designated Rights and Responsibilities) and (B) a management unit to have overall management responsibility for the implementation of this Compact.

(3) The Government shall ensure that the Governing Documents comply with the requirements set forth in this Program Annex.

(ii) Board.

(1) Formation. The Government shall ensure that the Board shall be formed, constituted, governed and operated in accordance with the terms and conditions set forth in the Compact, the Governing Documents and any Supplemental Agreement.

(2) Composition. Unless otherwise agreed by the Parties in writing, the Board shall consist of at least seven (7) but no more than eleven (11) voting members and at least two (2) non-voting Observers.

(A) The Board members designated by the Government shall be referred to herein as the ''Government Members.'' The other Board members shall be referred to herein as the ''Civil Members.'' Collectively, the Government Members and the Civil Members shall be referred to herein as the ''Voting Members.'' The non-voting Observers of the Board shall be the MCC Representative, and any other non-voting Observer designated from time to time.

(B) A Government Member may be replaced by another government official from a ministry or other government body relevant to the Program activities pursuant to the Governing Documents, subject to the prior receipt of a no-objection notice from MCC (such replacement to be referred to thereafter as a Government Member).

(C) Each Government Member position (other than the Chair) shall be filled by the individual, during the Compact Term, holding the office identified and all Government Members (including the Chair) shall serve in their capacity as the applicable Government officials and not in their personal capacity.

(D) The Voting Members, by majority vote, may alter the size of the Board in accordance with the Governing Documents so long as the total does not exceed eleven (11) members.

(E) Each Observer shall have rights to attend all meetings of the Board, participate in the discussions of the Board, and receive all information and documents provided to the Board, together with any other rights of access to records, employees or facilities as would be granted to a member of the Board under the Governing Documents.

(F) The Voting Members shall exercise their duties solely in accordance with the best interests of FOMILENIO, the Program, the Compact Goal and the Objectives, and shall not undertake any action that is contrary to those interests or would result in personal gain or a conflict of interest.

(3) Roles and Responsibilities. The roles and responsibilities of the Board shall include the following:

(A) The Board shall oversee the Management, the overall implementation of the Program, and the performance of the Designated Rights and Responsibilities.

(B) Certain actions may be taken and certain agreements, documents or instruments executed and delivered, as the case may be, by FOMILENIO only upon the approval and authorization of the Board as provided under applicable law or as set forth in any Governing Document, including each MCC Disbursement Request, selection or termination of certain Providers and any Implementation Document.

(C) The Chair, unless otherwise provided in the applicable Governing Documents or Supplemental Agreements, shall certify any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties (the ''Compact Reports'') or any other documents or reports from time to time delivered to MCC by FOMILENIO (whether or not such documents or reports are required to be delivered to MCC), and that such documents or reports are true, correct and complete.

(D) Without limiting the generality of the Designated Rights and Responsibilities that the Government may designate to FOMILENIO, and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex, elsewhere in this Compact or any Supplemental Agreement, the Board shall have the exclusive authority as between the Board and the Management for all actions defined for the Board in any Governing Document and which are expressly designated therein as responsibilities that cannot be delegated further.

(E) Meet with and exchange information with the Advisory Council, as contemplated in Section 3(e) of this Program Annex. Without limiting the generality of the foregoing, the Board shall take the Advisory Council's suggestions into consideration in connection with any amendment to the M&E Plan, pursuant to Section 5(b) of Annex III.

(4) Indemnification of Observers. The Government shall ensure, at the Government's sole cost and expense, that appropriate insurance is obtained and appropriate indemnifications and other protections are provided, acceptable to MCC and to the fullest extent permitted under the laws of El Salvador, to ensure that the Observers shall not be held personally liable for the actions or omissions of the Board or FOMILENIO. Pursuant to Section 5.5 and Section 5.8 of this Compact, the Government and FOMILENIO shall hold harmless the MCC Representative for any liability or action arising out of the MCC Representative's role as an Observer on the Board. The Government hereby waives and releases all claims related to any such liability and acknowledges that the MCC Representative has no fiduciary duty to FOMILENIO. In matters arising under or relating to this Compact, the MCC Representative is not subject to the jurisdiction of the courts or any other governmental body of El Salvador. FOMILENIO shall provide a written waiver and acknowledgement that no fiduciary duty to FOMILENIO is owed by the MCC Representative.

(iii) Management. Unless otherwise agreed in writing by the Parties, the Management shall report, through the Executive Director or other Officer as designated in any Governing Document, directly to the Board and shall have the composition, roles and responsibilities described below and set forth more particularly in the Governing Documents.

(1) Composition. The Government shall ensure that the Management shall be composed of qualified experts from the public or private sectors, including such offices and staff as may be necessary to carry out effectively its responsibilities, each with such powers and responsibilities as set forth in the Governing Documents, and from time to time in any Supplemental Agreement between the Parties, including the following: (A) Executive Director; (B) Deputy Executive Director; (C) Internal Auditor; (D) Legal Counsel; (E) Administrative Director; (F) Director of Technology and Information; (G) Director of Program Implementation, (H) Coordinator of the Human Development Component; (I) Coordinator of the Productive Development Component; (J) Coordinator of the Connectivity Component; (K) Director of the Procurement Program; (L) Director of Monitoring and Evaluation; (M) Financial and Institutional Director; (N) Director of Environmental and Social Impact; and (O) Director of Communications. Each person holding the position in any of the sub-clauses (A) through (O), and such other offices as may be created and designated in accordance with any Governing Document and any Supplemental Agreement, shall be referred to as an ''Officer.'' The Management shall be supported by appropriate administrative and support personnel consistent with the Detailed Budget for Program administration and any Implementation Document.

(2) Appointment of Officers. The Executive Director shall be selected after an open and competitive recruitment and selection process, and appointed in accordance with the Governing Documents, which appointment shall be subject to MCC approval. Such appointment shall be further evidenced by such document as the Parties may agree. Unless otherwise specified in the Governing Documents, or any Supplemental Agreement between the Parties, the Officers of FOMILENIO other than the Executive Director shall be selected and hired by the Board after an open and competitive recruitment and selection process, and appointed in accordance with the Governing Documents, which appointment shall be subject to MCC approval. Such appointment shall be further evidenced by such document as the Parties may agree.

(3) Roles and Responsibilities. The roles and responsibilities of the Management shall include:

(A) The Management shall assist the Board in overseeing the implementation of the Program and shall have principal responsibility (subject to the direction and oversight of the Board and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any Supplemental Agreement) for the overall management of the implementation of the Program.

(B) Without limiting the foregoing general responsibilities or the generality of the Designated Rights and Responsibilities that the Government may designate to FOMILENIO, the Management shall develop each Implementation Document, oversee the implementation of the Projects, manage and coordinate monitoring and evaluation, ensure compliance with the

Fiscal Accountability Plan, and such other responsibilities as set out in the Governing Documents or otherwise delegated to the Management by the Board from time to time.

(C) Appropriate Officers as designated in the Governing Documents shall have the authority to contract on behalf of FOMILENIO under any procurement undertaken in accordance with the Disbursement Agreement (including the Procurement Guidelines) in furtherance of the Program.

(D) The Management shall have the obligation and right to approve certain actions and documents or agreements, including certain Re-Disbursements, MCC Disbursement Requests, Compact Reports, certain human resources decisions and certain other actions, as provided in the Governing Documents.

(e) Advisory Council.

(i) Formation. The Government shall ensure the establishment of the Advisory Council by the Board, which Advisory Council shall be independent from FOLIMENIO and shall be established to the satisfaction of MCC. The Government shall take all steps necessary to establish the Advisory Council as soon as possible following the execution of this Compact.

(ii) Composition. The Advisory Council shall be comprised, unless otherwise agreed by the Parties, of the following members: (A) Five representatives of CND; (B) three members of the Northern Zone mayoral council; and (C) a representative of Northern Zone civil society. The Government shall take all actions necessary and appropriate to ensure that the Advisory Council is established consistent with this Section 3(e) of this Program Annex and as otherwise specified in the Governing Documents or otherwise agreed in writing by the Parties. The composition of the Advisory Council may be adjusted by agreement of the Parties from time to time to ensure, among other things, an adequate representation of the intended beneficiaries of the Program. Each member of the Advisory Council may appoint an alternate, approved by majority vote of the other members, to serve when the member is unable to participate in a meeting of the Advisory Council.

(iii) Roles and Responsibilities. The Advisory Council shall be a mechanism to provide representatives of the private sector, civil society and local government the opportunity to provide advice and input to FOMILENIO regarding the implementation of this Compact. FOMILENIO shall provide to the Advisory Council such information and documents as it deems advisable, subject to appropriate treatment of such information and documents by the members of the Advisory Council. During each meeting of the Advisory Council, FOMILENIO shall present an update on the implementation of this Compact and progress towards achievement of the Objectives. The Advisory Council shall have an opportunity to provide regularly to FOMILENIO its views or recommendations on the performance and progress on the Projects and Project Activities, any Implementation Document, procurement, financial management or such other issues as may be presented from time to time to the Advisory Council or as otherwise raised by the Advisory Council.

(iv) Meetings. The Advisory Council shall meet with the Board at least once every three months, as well as at such other periodic meetings as may be necessary or appropriate from time to time. The Advisory Council shall hold at least two general meetings per year, as well as such other periodic meetings as may be necessary or appropriate from time to time. Representatives of banking organizations, microfinance institutions, farmer associations, women's associations, chambers of commerce, anti-corruption associations and environmental and social organizations (''Civil Society Stakeholders''), among others, shall be provided timely advance notice of all such general meetings, invited to participate in all such meetings and afforded an opportunity during each such meeting to present their views or recommendations to the Advisory Council.

(v) Accessibility; Transparency. The members of the Advisory Council shall be accessible to the beneficiaries they represent to receive the beneficiaries' comments or suggestions regarding the Program. The notices for, and the minutes (including the views or recommendations of Civil Society Stakeholders expressed) of all general meetings of, the Advisory Council shall be made public on the FOMILENIO Web site or otherwise (including television, radio and print) in a timely manner.

(f) Implementing Entities. Subject to the terms and conditions of this Compact and any other Supplemental Agreement between the Parties, FOMILENIO may engage one or more (i) pre-determined ministries, bureaus or agencies of the Government based on their sector expertise, or (ii) government bodies, businesses, NGOs, vendors or contractors, selected according to the Procurement Guidelines, to implement and carry out any Project, Project Activity (or a component thereof), or any other activities to be carried out in furtherance of this Compact (each, an ''Implementing Entity''). The Government shall ensure that FOMILENIO enters into an agreement with each Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions (including the payment of the Implementing Entity, if any) (an ''Implementing Entity Agreement''). An Implementing Entity shall report directly to the relevant Officer, as designated in the applicable Implementing Entity Agreement or as otherwise agreed by the Parties.

(g) Fiscal Matters.

(i) Fiscal Agent. The Government shall ensure that, pursuant to the Reglamento or any other Governing Document as necessary, FOMILENIO appoints its financial management unit (Unidad Financiera Institucional) (''UFI'') as its fiscal agent (a ''Fiscal Agent'') and grants to UFI all power and rights necessary to perform the function of the Fiscal Agent, as such are set forth herein, in the Fiscal Accountability Plan and in any Supplemental Agreement or Implementation Letter. The Fiscal Agent shall be responsible for, among other things: (1) Assisting FOMILENIO in preparing the Fiscal Accountability Plan; (2) ensuring and certifying that Re-Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Disbursement Agreement and other Supplemental Agreements; (3) Re-Disbursement from, and cash management and account reconciliation of, any Permitted Account established and maintained for the purpose of receiving MCC Disbursements and making Re-Disbursements (to which the Fiscal Agent has sole signature authority); (4) providing applicable certifications for MCC Disbursement Requests; (5) maintaining and retaining proper accounting, records and document disaster recovery system of all MCC-funded financial transactions and certain other accounting functions; (6) producing reports on MCC Disbursements and Re-Disbursements (including any requests therefor) in accordance with established procedures set forth in the Disbursement Agreement, the Fiscal Accountability Plan, or any other Supplemental Agreements; (7) assisting in the preparation of budget development procedures; and (8) internal management of the Fiscal Agent operations. Upon the written request of MCC for UFI to be replaced as the Fiscal Agent, the Government shall ensure that FOMILENIO engages a new Fiscal

Agent, subject to approval by the Board and MCC; *provided, however,* that the Government shall ensure that UFI continue to perform its obligations as the Fiscal Agent until FOMILENIO has engaged a successor Fiscal Agent. In the event that a party other than UFI is the Fiscal Agent, upon the written request of MCC, the Government shall ensure that FOMILENIO terminates the Fiscal Agent, without any liability to MCC, and the Government shall ensure that FOMILENIO engages a new Fiscal Agent, subject to approval by the Board and MCC. The Government shall ensure that FOMILENIO enters into an agreement with each Fiscal Agent other than UFI, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent (each, a ''Fiscal Agent Agreement''). Such Fiscal Agent Agreement shall not be terminated until FOMILENIO has engaged a successor Fiscal Agent or as otherwise agreed by MCC in writing.

(ii) Fiscal Oversight Agent. The Government shall ensure that FOMILENIO engages an agent through an international competitive process (the ''Fiscal Oversight Agent'') to carry out and certify certain financial management activities in furtherance of this Compact. The role and responsibilities of such Fiscal Oversight Agent and the criteria for selection of a Fiscal Oversight Agent shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. The Government shall ensure that FOMILENIO enters into an agreement with the Fiscal Oversight Agent, in form and substance satisfactory to MCC, that sets forth (1) the roles and responsibilities of the Fiscal Oversight Agent with respect to the oversight of the Fiscal Agent and the monitoring and review of the Fiscal Agent's compliance with the Fiscal Accountability Plan; and (2) other appropriate terms and conditions, such as payment of the Fiscal Oversight Agent (the ''Fiscal Oversight Agreement'').

(h) Auditors and Reviewers. The Government shall ensure that FOMILENIO carries out the Government's audit responsibilities as provided in sections 3.18(d), (e) and (f) of this Compact, including engaging one or more auditors (each, an ''Auditor'') required by section 3.18(d) of this Compact. As requested by MCC in writing from time to time, the Government shall ensure that FOMILENIO also engages (i) an independent reviewer to conduct reviews of performance and compliance under this Compact pursuant to section 3.18(f) of this Compact, which reviewer shall have the capacity to (1) conduct general reviews of performance or compliance, (2) conduct environmental audits, and (3) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III, and/or (ii) an independent evaluator to assess performance as required under the M&E Plan (each, a ''Reviewer''). FOMILENIO shall select any such Auditor(s) and Reviewer(s) in accordance with any Governing Document or other Supplemental Agreement. The Government shall ensure that FOMILENIO enters into an agreement with each Auditor and each Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer (the ''Auditor/Reviewer Agreement''). In the case of a financial audit required by section 3.18(d) of this Compact, such Auditor/Reviewer Agreement shall be effective no later than one hundred and twenty (120) days prior to the end of the relevant period to be audited; *provided, however,* if MCC requires concurrent audits of financial information or reviews of performance and compliance under this Compact, then such Auditor/Reviewer Agreement shall be effective no later than the date agreed by the Parties in writing.

(i) Procurement Agent. The Government shall ensure that FOMILENIO engages one or more procurement agents through an international competitive process (each, a ''Procurement Agent'') to carry out and certify specified procurement activities in furtherance of this Compact on behalf of the Government, FOMILENIO, or the Implementing Entity. The roles and responsibilities of each Procurement Agent and the criteria for selection of a Procurement Agent shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. The Government shall ensure that FOMILENIO enters into an agreement with each Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent (each, a ''Procurement Agent Agreement''). Any Procurement Agent shall adhere to the procurement standards set forth in the Disbursement Agreement and the Procurement Guidelines and ensure procurements are consistent with the procurement plan adopted by FOMILENIO pursuant to the Disbursement Agreement (the ''Procurement Plan''), unless FOMILENIO and MCC otherwise agree in writing.

4. Finances and Fiscal Accountability

(a) Multi-Year Financial Plan; Detailed Budget.

(i) Multi-Year Financial Plan. The multi-year financial plan for the Program, showing the estimated amount of MCC Funding allocable to each Project (and related Project Activities), the administration of the Program (and its components) and the monitoring and evaluation of the Program (the ''Multi-Year Financial Plan'') over the Compact Term on an annual basis, is summarized in Annex II to this Compact.

(ii) Detailed Budget. During the Compact Term, the Government shall ensure that FOMILENIO timely delivers to MCC a detailed budget, at a level of detail and in a format acceptable to MCC, for the administration of the Program, the monitoring and evaluation of the Program, and the implementation of each Project (the ''Detailed Budget''). The Detailed Budget shall be a component of the Work Plan and shall be delivered by such time as specified in the Disbursement Agreement, or as may otherwise be agreed by the Parties.

(iii) Expenditures. Unless the Parties otherwise agree in writing, no financial commitment involving MCC Funding shall be made, no obligation of MCC Funding shall be incurred, and no Re-Disbursement shall be made or MCC Disbursement Request shall be submitted for any activity or expenditure unless the expense for such activity or expenditure is provided for in the Detailed Budget, and unless uncommitted funds exist in the balance of the Detailed Budget for the relevant period.

(iv) Modifications to Multi-Year Financial Plan or Detailed Budget. Notwithstanding anything to the contrary in this Compact, FOMILENIO may amend the Multi-Year Financial Plan, the Detailed Budget, or any component thereof (including any amendment that would reallocate the funds among the Projects, the Project Activities, or any activity under Program administration or M&E as shown in Annex II), without amending this Compact so long as FOMILENIO requests in writing and receives the approval of MCC for such amendment

and such amendment is consistent with the requirements of this Compact (including section 4 of Annex II), the Disbursement Agreement and any other Supplemental Agreement between the Parties. Any such amendment shall (1) be consistent with the Objectives and the Implementation Documents; (2) shall not materially adversely impact the applicable Project, Project Activity (or any component thereof), or any activity under Program administration or M&E as shown in Annex II; (3) shall not cause the amount of MCC Funding to exceed the aggregate amount specified in section 2.1(a) of this Compact; and (4) shall not cause the Government's obligations or responsibilities or overall contribution of resources to be less than as specified in section 2.2(a) of this Compact, this Annex I or elsewhere in this Compact. Upon any such amendment, FOMILENIO shall deliver to MCC a revised Detailed Budget, together with a revised Multi-Year Financial Plan, reflecting such amendment, along with the next MCC Disbursement Request.

(b) Disbursement and Re-Disbursement. The Disbursement Agreement, as amended from time to time, shall specify the terms, conditions and procedures on which MCC Disbursements and Re-Disbursements shall be made. The obligation of MCC to make MCC Disbursements or approve Re-Disbursements is subject to the fulfillment, waiver or deferral of any such terms and conditions. The Government and FOMILENIO shall jointly submit the applicable request for an MCC Disbursement (the ''MCC Disbursement Request'') as may be specified in the Disbursement Agreement. MCC will make MCC Disbursements in tranches to a Permitted Account from time to time as provided in the Disbursement Agreement or as may otherwise be agreed by the Parties, subject to Program requirements and performance by the Government, FOMILENIO and other relevant parties in furtherance of this Compact. Re-Disbursements will be made from time to time based on requests by an authorized representative of the appropriate party designated for the size and type of Re-Disbursement in accordance with any Governing Document and Disbursement Agreement; provided, however, unless otherwise agreed by the Parties in writing, no Re-Disbursement shall be made unless and until the written approvals specified herein and in any Governing Document and the Disbursement Agreement for such Re-Disbursement have been obtained and delivered to the Fiscal Agent.

(c) Fiscal Accountability Plan. By such time as specified in the Disbursement Agreement or as otherwise agreed by the Parties, FOMILENIO shall adopt, as part of the Implementation Documents, a plan that identifies the principles, mechanisms and procedures to ensure appropriate fiscal accountability for the use of MCC Funding provided under this Compact, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and the procurement of goods, works and services for the accomplishment of the Objectives (the ''Fiscal Accountability Plan''). The Fiscal Accountability Plan shall set forth, among others, requirements with respect to the following matters: (i) Re-Disbursements, timely payment to vendors, cash management and account reconciliation; (ii) funds control and documentation; (iii) accounting standards and systems; (iv) content and timing of reports; (v) preparing budget development procedures and the Compact implementation budget; (vi) policies concerning records, document disaster recovery, public availability of all financial information and asset management; (vii) procurement and contracting practices; (viii) inventory control; (ix) the role of independent auditors; (x) the roles of fiscal agents and procurement agents; (xi) separation of duties and internal controls; and (xii) certifications, powers, authorities and delegations.

(d) Permitted Accounts. The Government shall establish, or cause to be established, such accounts (each, a ''Permitted Account'' and, collectively, the ''Permitted Accounts'') as may be agreed by the Parties in writing from time to time, including:

(i) A single, completely separate United States Dollar interest-bearing account (the ''Special Account'') at the Central Reserve Bank of El Salvador to receive MCC Disbursements;

(ii) An account at a commercial bank in El Salvador (the ''Local Account'') to which funds deposited in the Special Account will be transferred for the purpose of making Re-Disbursements; and

(iii) Such other accounts in such banks as the Parties mutually agree upon in writing.

No other funds shall be commingled in a Permitted Account other than MCC Funding and Accrued Interest thereon. All MCC Funding held in an interest-bearing Permitted Account shall earn interest at a rate of no less than such amount as the Parties may agree in the applicable Bank Agreement or otherwise. MCC shall have the right, among others, to view any Permitted Account statements and activity directly on-line, where feasible, or at such other frequency as the Parties may otherwise agree. By such time as shall be specified in the Disbursement Agreement or as otherwise agreed by the Parties, the Government shall ensure that, for each Permitted Account, FOMILENIO enters into an agreement, satisfactory to MCC, with the applicable Bank that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account (each, a ''Bank Agreement'').

5. Transparency; Accountability

Transparency and accountability to MCC and to the beneficiaries are important aspects of the Program and the Projects. Without limiting the generality of the foregoing, and in an effort to achieve the goals of transparency and accountability, the Government shall ensure that FOMILENIO:

(a) Establishes an e-mail suggestion box as well as a means for other written comments that interested persons may use to communicate ideas, suggestions or feedback to FOMILENIO;

(b) Considers as a factor in its decision-making the recommendations of the Advisory Council;

(c) Develops and maintains, in a timely, accurate and appropriately comprehensive manner, the FOMILENIO Web site that includes postings of information and documents in English and Spanish;

(d) Posts on the FOMILENIO Web site, and otherwise makes publicly available via appropriate means (including television, radio and print), in the appropriate language the following documents or information from time to time:

(i) This Compact;

(ii) All minutes of the meetings of the Board and the meetings of the Advisory Council, unless otherwise agreed by the Parties;

(iii) The M&E Plan, as amended from time to time, along with periodic reports on Program performance;

(iv) Such financial information as may be required by this Compact, the Disbursement Agreement or any other Supplemental Agreement, or as may otherwise be agreed from time to time by the Parties;

(v) All Compact Reports;

(vi) All audit reports by an Auditor and any periodic reports or evaluations by a Reviewer;

(vii) All relevant environmental impact assessments and supporting documents, and such other environmental documentation as MCC may request;

(viii) A copy of the Disbursement Agreement, as amended from time to time;

(ix) A copy of any document relating to the formation, organization and governance of FOMILENIO, including all Governing Documents, together with any amendments thereto; and

(x) A copy of the Procurement Guidelines, any procurement policies or procedures and standard documents, certain information derived from each Procurement Plan (as specified in the Disbursement Agreement), and all bid requests and notifications of awarded contracts.

6. Environmental Accountability

(a) The Government shall undertake and complete a strategic environmental assessment of the Northern Zone (the ''SEA'') as a condition precedent to certain MCC Disbursements as specified in the Disbursement Agreement, and in form and substance satisfactory to MCC.

(b) The Government shall ensure that FOMILENIO (or any other Permitted Designee) (i) undertakes and completes any environmental impact assessments (each, an ''EIA''), environmental management plans (each, an ''EMP'') and resettlement action plans (each, a ''RAP''), each in form and substance satisfactory to MCC, and as required under the laws of El Salvador, the Environmental Guidelines, this Compact or any Supplemental Agreement or as otherwise required by MCC; and (ii) undertakes to implement any environmental and social mitigation measures identified in such assessments or plans to MCC's satisfaction.

(c) The Government shall commit to fund all necessary costs of environmental mitigation (including costs of resettlement) not specifically provided for in the Detailed Budget for any Project.

(d) By the time specified in the Disbursement Agreement, the Government shall ensure that the Department of Environment and Natural Resources (*Ministerio del Medio Ambiente y Recursos Naturales* or *''MARN''*) creates and fills at least one additional permanent staff position in each of the citizen participation, environmental assessment, and territorial organization units as described in a staffing plan that shall be acceptable to MCC. The Government shall provide sufficient resources to implement the staffing plan.

(e) As specified in the Disbursement Agreement, the Government shall ensure that MARN establishes, and maintains throughout the Compact Term, an interdepartmental task force concerning the environmental aspects of the Human Development Project, the Productive Development Project and the Connectivity Project.

(f) As specified in the Disbursement Agreement, the Government shall ensure that MARN strengthens the environmental management system in the Northern Zone as part of the *Sistema Nacional de Gestión Ambiental (''SINAMA'').* The municipal environmental units of SINAMA shall be capable of, among other activities, developing and enforcing municipal land-use planning ordinances consistent with the departmental territorial development plans and the *Plan Nacional de Ordenamiento y Desarrollo Territorial.* The Government shall provide appropriate resources to SINAMA as described in a strengthening plan acceptable to MCC.

(g) The requirement set forth in paragraphs (d), (e) and (f) shall be referred to as the ''MARN Program Requirements.''

Schedule 1 to Annex I—Human Development Project

This Schedule 1 generally describes and summarizes the key elements of the project that the Parties intend to implement in furtherance of the Human Development Objective (the ''Human Development Project''). Additional details regarding the implementation of the Human Development Project will be included in the Implementation Documents and in the relevant Supplemental Agreements.

1. Background

Despite progress made in recent years, significant numbers of El Salvador's poor still lack basic public services required for human development. This problem is particularly acute in the Northern Zone, where an estimated 25 percent of the population (roughly 225,000 people) is not connected to water systems, over 20 percent (nearly 200,000 people) is without improved sanitation services (*e.g.*, latrines), and 28 percent (over 235,000 individuals) are without electricity service. Poor community infrastructure (*e.g.*, impassable local roads) forces many rural poor to forgo opportunities to seek education, health care, or employment and thereby improve their livelihoods.

Human development is also hampered by gaps and constraints in education and training. The average number of years of formal education in the Northern Zone stands at 3.7 years, compared to 5.6 years in the rest of the country. Fewer than one in ten children complete secondary schooling, and the quality of this education is poor. As a consequence, many youth opt to migrate to other countries or to large urban centers, where, lacking skills, they remain in poverty. The Government is currently implementing a national education development strategy, known as Plan 2021, intended to improve educational effectiveness, achieve universal secondary education, strengthen technical and technological education and promote the development of science and technology. For this plan to succeed, additional resources are required for the Northern Zone, especially in the realm of formal secondary technical schools and non-formal skills development training.

2. Summary of the Human Development Project and Related Projects Activities

The Human Development Project is designed to increase knowledge and skills through education and skills development programs and to increase access to basic services and community infrastructure. MCC Funding will support the following Project Activities:

- *Education and Training:* To increase the quality and capacity of formal and non-formal vocational programs to enable these programs to absorb and train greater numbers of students and expand access to more at-risk youth and young adults.
- *Community Development:* To increase coverage of water supply and sanitation facilities and services, to provide near universal coverage of on and off-grid electricity, and to provide or improve community infrastructure to ensure local connectivity for poor communities in the Northern Zone.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor the progress of the implementation of the Human Development Project. Performance against these benchmarks, as well as the overall impact of the Human Development Project, will be assessed and reported at the intervals to be specified in the M&E Plan, or as otherwise agreed by the Parties, from time to time. The Parties expect that additional indicators will be identified during implementation of the Human Development Project. The *expected results* from, and the *key benchmarks* to measure progress on, the Human Development Project, as well as the

Project Activities undertaken or funded thereunder, are set forth in Annex III.

Estimated amounts of MCC Funding for each Project Activity for the Human Development Project are identified in Annex II. Conditions precedent to each Project Activity under the Human Development Project, and the sequencing of such Project Activities, will be set forth in the Disbursement Agreement, any other Supplemental Agreements and the relevant Implementation Documents.

The following summarizes each Project Activity under the Human Development Project:

(a) Project Activity: Education and Training (the ''Education and Training Activity'')

The Education and Training Activity seeks to increase education and skill levels of the Northern Zone's poor by expanding the quality of, and access to, vocational and technical education and training. It is comprised of three sub-activities: Technical assistance; formal technical education; and non-formal skills development.

To ensure optimal execution, the Government shall ensure that an advisory committee, acceptable to MCC, is formed to provide advice, oversight, and corresponding recommendations to FOMILENIO and corresponding Implementing Entities regarding the Education and Training Activity (the ''Education and Training Advisory Committee''). The Education and Training Advisory Committee will include representatives from the private sector, NGOs, and local governments. Key donors supporting the education sector also will be invited to participate as needed, to ensure strong coordination and collaboration. Moreover, a gender assessment will be conducted under this Project Activity to address issues of access and meaningful participation and to inform Project Activity design and implementation, consistent with the outcomes of the SEA.

(i) Project Sub-Activity: Technical Assistance (the ''Technical Assistance Sub-Activity'')

The Technical Assistance Sub-Activity will bolster capacity of institutions and organizations involved in policy, planning, and administration of education and training in the Northern Zone. MCC Funding will be used to procure the services of a long-term technical assistance provider that will support Implementing Entities in undertaking the following:

(1) Conduct a diagnostic analysis, including a gender assessment, of current conditions in formal vocational education and non-formal training programs in the Northern Zone. The diagnostic will identify facilities and equipment needs, curricula and program design, criteria for selecting schools to be improved (which criteria must be approved by MCC), and other relevant parameters that will frame Compact interventions. Implementation plans will be developed based on the results of the diagnostic. MCC must approve implementation plans prior to commencing execution and effecting associated disbursements, as detailed in the Disbursement Agreement.

(2) Conduct a study to identify the most appropriate and feasible measures to financially sustain innovations and programs supported by MCC under the Education and Training Activity. This study will include an assessment of augmenting the role of the private sector as vocational education training providers.

(3) Support the formation, meetings, and activities of the Education and Training Advisory Committee. The Education and Training Advisory Committee also will provide support to design and monitor interventions to be implemented in the Formal Technical Education Sub-Activity and the Non-Formal Skills Development Sub-Activity.

(ii) Project Sub-Activity: Formal Technical Education (the ''Formal Technical Education Sub-Activity'')

The Formal Technical Education Sub-Activity aims to strengthen technical/vocational education institutions in the Northern Zone, so that more youth can gain marketable skills and thereby increase their opportunities for employment and income generation. The Ministry of Education will be the principal Implementing Entity for this Sub-Activity. Specifically, MCC Funding will support the following:

(1) Strengthen an existing post-secondary institute in Chalatenango (the ''Chalatenango Center'') to improve teacher skills, facilities, equipment, and curriculum resources to offer improved secondary and post-secondary courses to up to 1,100 students annually by the end of the Compact Term. Strengthening the Chalatenango Center will enable it to serve as a national hub for advanced technology training and a repository for instructional resources in thirty (30) or more career fields.

(2) Support the strengthening of the Chalatenango Center to become a resource center for in-service and pre-service vocational teacher training, curriculum experimentation and other forms of resource development in support of the middle technical schools in the Northern Zone and throughout El Salvador. More than 5,000 teachers will benefit from in-service and pre-service training, participate in demonstration vocational training programs, and share resources and learning materials with schools throughout El Salvador.

(3) Support the strengthening of approximately twenty (20) middle technical schools in key municipalities (selected based on the MCC-approved criteria established under the Technical Assistance Sub-Activity) with links to the other activities funded under the Program. This support will include: improving the array of degree granting and non-degree granting vocational training and skills courses for youth; training teachers in the use of advanced instructional technologies; linking formal education with private sector needs; capital improvements (laboratories and workshops); and purchasing needed equipment. Where feasible, MCC Funding for capital improvements will leverage funding from local governments, communities, private parties, neighborhood associations and other NGOs. It is expected that over 9,000 students will benefit from this vocational training during the Compact Term and the quality of training delivered will be improved.

(4) Establish a competitive scholarships program to reach deserving, yet poverty-stricken youth. The Implementing Entity for this program will be determined on a competitive basis. It is expected that over 3,600 scholarships will be granted with MCC Funding for post-secondary and, primarily, middle technical school attendance under the Formal Technical Education Sub-Activity.

(iii) Project Sub-Activity: Non-Formal Skills Development (the ''Non-Formal Skills Development Sub-Activity'')

The Non-Formal Skills Development Sub-Activity will complement the Formal Technical Education Sub-Activity by supporting non-credit, short term and pre-employment training offerings. The Non-Formal Skills Development Sub-Activity will expand access to non-formal education and training activities to the poor, women, at-risk youth, and others who are unlikely or unable to attend the extended programs of the middle technical schools, whether because of family responsibilities or because of inadequate educational foundation. Training will foster networking and cooperation with area businesses, through internships, on-the-job training, and mentoring. Where feasible, this training will be linked with activities in the twenty (20) middle technical

schools related to the Formal Technical Education Sub-Activity.

The Non-Formal Skills Development Sub-Activity will fund non-formal training activities throughout the Northern Zone. The Instituto Salvadoreño de Formación Profesional will manage the Non-Formal Skills Development Sub-Activity through contracts with competitively selected service providers including private firms, NGOs, and other organizations qualified to deliver training services. Training programs and courses will be determined based on diagnostics and work plans developed in connection with the Technical Assistance Sub-Activity. Programs will focus on short-term, pre-employment training and market-based skills training, and other course modules that enable participants to obtain skills needed to improve their access to formal sector employment opportunities and/or contribute to the more efficient operation of new and existing micro, small and medium businesses. It is expected that approximately 13,000 at-risk youth, women and other disadvantaged Northern Zone residents will benefit from this skills development assistance.

(b) Project Activity: Community Development (the ''Community Development Activity'')

The Community Development Activity aims to dramatically increase access of the Northern Zone's poor to basic public services and infrastructure. It is comprised of three sub-activities: water and sanitation infrastructure; rural electrification; and community infrastructure.

For this Project Activity, the Government will ensure that appropriate environmental permits are obtained and requirements are met and that any involuntary resettlement issues are addressed according to the Environmental Guidelines and in compliance with the laws of El Salvador. This will include the implementation of environmental and social mitigation measures as identified in environmental assessments, or as otherwise may be appropriate, to include compensation for physical and economic displacement of individuals, residences and businesses affected by such rehabilitation and construction, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12). Feasibility, design and environmental assessment of Project Activities will be consistent with the outcomes of the SEA. MCC Funding will support training in environmental management.

(i) Project Sub-Activity: Water Supply and Sanitation Infrastructure (the ''Water and Sanitation Sub-Activity'')

MCC Funding will enhance access to water systems for approximately 90,000 and to improved sanitation services for approximately 50,000 of the poorest inhabitants in the Northern Zone. These services, which constitute basic human needs essential to supporting human and economic development, will result in significant benefits in terms of reduced incidence of disease caused by the currently sub-standard levels of water and sanitation service in the region. Beyond reduced mortality and morbidity, specific benefits include reduced expenditures on health care, increased attendance at school and work, and reduced time and cost spent seeking or purchasing water. The Water and Sanitation Sub-Activity will be undertaken using a community-based approach that integrates infrastructure improvements with local capacity building to sustain the operation and maintenance of systems constructed, and that provides important community health education.

Specifically, MCC Funding will support the following:

(1) Feasibility studies, project designs, and environmental assessments for water supply and sanitation infrastructure, to include well drilling and pump tests, hydrogeological studies, water quality tests, appropriate watershed management plans, and site-specific EIAs, EMPs, and RAPs, as needed;

(2) Construction of potable water systems meeting World Health Organization standards, or other standards acceptable to MCC, and sanitation systems (e.g., household latrines) in approximately twenty-five (25) municipalities of the Northern Zone;

(3) Technical assistance for community capacity building, to ensure system maintenance and sustainability (e.g., creation and training of local water management boards); and

(4) Community education related to appropriate health and sanitation practices.

A transparent and participatory project selection process will be used to prioritize execution of the water and sanitation projects to be supported with MCC Funding from among the more than 20 municipalities already identified by the Social Fund for Local Development (''FISDL''). Final project selection criteria, to be approved by MCC, will include: (i) Financial and economic viability; (ii) technical viability; (iii) environmental and social viability; and (iv) municipal and community demand and contribution to project development. Municipalities must contribute at least 10 percent of project cost and beneficiary communities must contribute at least an additional 10 percent of project cost, in cash and/or in-kind. These criteria will be explicitly defined and published during final project design, prior to implementation.

The Water and Sanitation Sub-Activity's development process is expected to include:

- A promotion phase, during which selection criteria will be developed, working relationships with municipalities will be established and specific needs will be further detailed, and the terms of municipality cost-share cash contribution and community cost share (cash and/or in-kind) will be defined.
- A feasibility phase, during which feasibility studies and environmental analyses will be performed in packages with technical support from FISDL.
- An execution phase, involving the development of design and bid packages by consultants; the execution of infrastructure and training components based on design and specifications; and the formation and training of any local health, environmental, and water boards.
- A post-construction sustainability or monitoring period including: legalization of water boards; further training and technical assistance for water boards and municipalities in system operation and maintenance (''O&M''), administration and financial management; transfer of the responsibility for the water systems to local water boards (where applicable); and water quality monitoring by the Government.

(ii) Project Sub-Activity: Rural Electrification (the ''Rural Electrification Sub-Activity'')

The Rural Electrification Sub-Activity will extend electricity to at least 97 percent of the estimated 47,000 households in the Northern Zone that currently are not connected to local power distribution networks. Service will be provided to these households through, as appropriate for the household, investments in the extension of distribution networks, in individual household connections to the network, and in the supply of off-grid solar photovoltaic systems. MCC Funding will cover up to 85 percent of the projected investment in the electrification efforts, with contributions from the Government and the executing entities comprising the balance of at

least 15 percent. Access to electricity will result in immediate and significant financial savings to the beneficiaries, and is expected to increase household productivity significantly.

Specifically, MCC Funding will support the following:

(1) Feasibility, design, and environmental assessment to include site-specific EIAs, EMPs, and RAPs, as needed, for new distribution lines;

(2) Construction of approximately 1,500 km of new distribution lines and the corresponding connection of approximately 21,000 households to the expanded network;

(3) Connection of approximately 25,000 households to existing networks via the construction of necessary low voltage extensions;

(4) Investment in upgrading distribution networks as necessary to support the anticipated additional load on the system;

(5) Installation of approximately 950 solar power systems and provision of technical assistance for the creation of community associations for the management of solar power system operations and maintenance; and

(6) Contracting of a financial advisor by and at the expense of FOMILENIO to advise FOMILENIO on financial aspects and implications of the procurement process associated with the Rural Electrification Sub-Activity, as needed.

FOMILENIO must ensure that the Rural Electrification Sub-Activity is executed in a manner acceptable to MCC with the goals of minimizing capital subsidies while maximizing the number of beneficiaries, the quality of electric service provided, and the long-term sustainability of the implemented projects. FOMILENIO also must ensure that assets, obligations, and rights generated and/or conferred as a result of MCC Funding are handled in a manner acceptable to MCC, further details of which shall be defined in an Implementing Entity Agreement approved by MCC.

FOMILENIO and the respective Implementing Entity will ensure that open and transparent bidding or auction mechanisms are used in the process of selecting parties to execute the design and implementation of rural electrification works. The financial advisor to be hired by FOMILENIO pursuant to clause (6) above will provide FOMILENIO and the Implementing Entity with independent third party advice aimed at optimizing tenders, auctions, or procurements to minimize the cost of proposed projects while ensuring successful implementation. This financial analyst will be engaged prior to finalization of procurement/auction plans and during the execution of procurements/auctions, including direct participation in associated negotiations. This financial advisor will report directly to FOMILENIO's assigned key personnel, to ensure required levels of the advisor's independence and additional confidence in the integrity of associated transactions.

(iii) Project Sub-Activity: Community Infrastructure (the ''Community Infrastructure Sub-Activity'')

A significant barrier to increased growth in the Northern Zone is that communities lack adequate connectivity to access markets, employment, and health care or education facilities. This lack of local infrastructure therefore hinders local economic growth and human development. The Community Infrastructure Sub-Activity will improve the connection among isolated communities and villages in the Northern Zone while ensuring sustainable management of natural resources.

Specifically, MCC Funding will support the following:

(1) Feasibility, design, and environmental assessment to include site-specific EIAs, EMPs, and RAPs, as needed, of community infrastructure development;

(2) Rehabilitation and construction of community infrastructure such as small roads and drainage works, retaining walls, pedestrian crossings and small bridges; and

(3) Technical assistance to communities and municipalities on infrastructure O&M.

A transparent and participatory project selection process will be used to prioritize community infrastructure projects to be supported with MCC Funding from among the 170 or more candidate projects identified by FISDL in more than twenty (20) of the Northern Zone's poorest municipalities. Final project selection criteria, to be approved by MCC, will include: (i) Financial and economic viability; (ii) technical viability; (iii) environmental and social viability; and (iv) municipal and community demand and contribution to project development. The candidate projects/communities will be eligible and encouraged to apply for funding, through their municipalities. With regard to municipal and community demand and contribution to project development, a municipal contribution of at least 10 percent of project cost will be required as a cash set-aside for infrastructure O&M, along with a matching contribution from beneficiary communities of at least an additional 10 percent, in cash and/or in-kind.

The Community Infrastructure Sub-Activity will employ a community-based approach that integrates infrastructure improvements with local capacity building to sustain the operation and maintenance of community infrastructure developed. Projects will be packaged by location and/or type and contracted based on FISDL-approved design specifications, as appropriate. The infrastructure developed will become community assets, to be maintained by the municipalities.

3. Beneficiaries

The Formal Technical Education Sub-Activity is expected to provide training to over 10,000 participants, and to 5,000 teachers. Priority groups will include the poor, women, youth at risk of migration or gang participation, unemployed persons (irrespective of age) and secondary school age youth. The Formal Technical Education Sub-Activity will equip these beneficiaries with skills to obtain work or generate more personal and family income, notably for girls and women.

The flexible and short-term training provided under the Non-Formal Skills Development Sub-Activity is expected to benefit approximately 13,000 persons. Such training will be industry or job-specific, and is intended to expand participants' employment opportunities and to improve participant's earning potential. More and better trained employees will provide the private and public sector with more productive workers, meet specific technology needs that are critical for economic advancement, and offer critical skills training to non-traditional, at-risk youth and adults.

The Community Development Activity is intended to transform economic conditions for currently poor households in the Northern Zone. The investments in the provision of basic services and community infrastructure will create more economic opportunities and raise productivity, while lowering the costs of water, sanitation, electricity, transportation, and other important services essential for improving the well-being of currently disadvantaged people. Household incomes of the poor will rise due to improved economic opportunities, health and reduction in the number of lost working or school days. The strategic infrastructure and basic services projects will contribute to increased productivity among the beneficiaries.

The investments made under the Water and Sanitation Sub-Activity are

expected to benefit 90,000 or more rural residents (18,000 households) in the Northern Zone. Projects will be located in municipalities classified by poverty level and lack of coverage in water supply and sanitation.

The Government estimates that over 47,000 rural households in the Northern Zone (roughly 25 percent of the population) lack electric service coverage and could receive service through the Rural Electrification Sub-Activity. It is proposed that approximately 25,000 households will be connected to existing distribution networks, about 21,000 will be connected to new, extended distribution networks (1,500 km of new lines), and roughly 950 households in isolated communities or located near protected areas that will receive solar power systems. For the latter, community beneficiaries will be the association members or company owners. The associations' functions will include the local collection and administration of funds dedicated to O&M activities, the training of users in the use and maintenance of the solar power systems, and the solicitation of technical support from the Government.

The Community Infrastructure Sub-Activity will benefit over 130,000 residents (over 26,000 households) in over 20 municipalities in the Northern Zone. The beneficiaries of this effort will include the poorest households, such as those composed of under represented groups.

4. Donor Coordination; Role of Private Sector and Civil Society

Activities supported under the Education Activity will interface with the principal strategies of the international donor community, and is in consonance with the national educational development plan, Plan 2021, that receives support from major donors. Initial coordination meetings have been held with the World Bank, the Inter-American Development Bank (''IADB''), the European Union, the Japanese International Cooperation Agency and donor agencies within El Salvador's private sector. Private sector organizations are already intensely involved in the delivery of human resources development in El Salvador. The private business group FEPADE plays a major role in overseeing five vocational training facilities, and will be assigned a critical role in MCC funded operations.

Several donors, including the German Development Bank, IADB, the European Union, and Luxemburg, support FISDL programs that invest in providing basic services (including water and sanitation) to communities throughout El Salvador. FISDL's *Red Solidaria* is the largest program, targeting the 100 poorest municipalities of El Salvador. Current plans across these programs include the investment of nearly US$ 30 million in the Northern Zone over the 2006 to 2011 period. However, the Community Development Activity has targeted municipalities (among those deemed the poorest) where currently there are no plans for funding.

The Community Infrastructure Sub-Activity will constitute an extension of *Red Solidaria*. In extending the reach of Red Solidaria efforts rather than overlapping with them, MCC Funding will be dedicated to projects and communities (among the poorest) where there are not existing plans or dedicated funds from other donors.

Japan and the European Union are the primary donors already active in rural electrification in El Salvador. To ensure there is no overlap in funding with MCC, the Government, through MINEC, has indicated that US$ 6.6 millions from these two donors that had initially been planned for rural electrification programs in the Northern Zone will be redirected to municipalities outside the Northern Zone.

Several national and international NGOs are active in water and sanitation in El Salvador, with experience in of the areas of project development, design, and implementation; these include CARE, Project Concern International, and Plan International. These organizations are eligible to submit proposals for and could potentially be selected to perform projects under the Water and Sanitation Sub-Activity.

The World Bank is providing advisory and financial assistance to complete the SEA related to the Program, the first of its kind led by MARN.

5. U.S. Agency for International Development

Education has long been a priority of USAID; however, USAID projects primarily are focused on primary education, while MCC Funding will target the secondary, adult and tertiary sectors. The complementary work of MCC and USAID in support of education improvements in El Salvador offers strong opportunities for collaboration, especially in the area of teacher training, institutional strengthening and learning materials development.

From 1997 to 2005, USAID was active in funding water and sanitation programs in El Salvador; however, current USAID activities do not focus specifically on water and sanitation. The specific model presented for MCC Funding under this Project is very similar to that successfully previously implemented by USAID through FISDL and local contractors. FOMILENIO will continue to dialogue with USAID to identify potential opportunities for coordination and adaptation of best-practices with respect to the Water and Sanitation Project.

6. Sustainability

All aspects of the Education and Training Activity are being designed to install permanent capacities in key Salvadoran ministries and institutions. Investments in school strengthening and education infrastructure development will continue well after the Compact Term. All interventions under the Education and Training Activity are envisioned to serve multiple purposes and to broaden access to skills training by more vulnerable and at-risk populations. The MCC-supported program is expected to include strong private sector involvement, engender local and civil society ownership, and expand the range and quality of permanent instructional assets. These elements will lead to more sustainable impact, permitting an ever-growing number of youth and adults in the Northern Zone to access diverse and quality training after the Compact Term.

Sustainability of the systems installed under the Water and Sanitation Sub-Activity will be supported in part by the inclusion of municipal and community contributions (cash and in-kind) totaling at least 20 percent of project costs. This requirement will help ensure that municipalities and communities have allocated resources for the maintenance of the infrastructure developed under the Community Development Activity, and that community demand is reflected in project selection. In addition, system designs will be developed in a manner that meets community needs and that leads to a tariff (committed to by user contract) that reflects local willingness to pay. Technical assistance will also be provided to communities in system use and management. Finally, the project implementation plan includes a period of post-construction monitoring and ongoing capacity building, including the training of newly established water boards in system O&M, and administration and financial management.

The sustainability of the Rural Electrification Sub-Activity is largely based on the fact that the distribution companies executing network investments will, in accordance with Salvadoran law, recuperate O&M costs through the electricity tariff customers pay. This tariff, verified by the sector

regulator, the *Superintendencia General de Electricidad y Telecomunicaciones (''SIGET''),* also includes a network charge that incorporates O&M costs. Any and all capital investments funded by MCC will be excluded from the rate base used to calculate tariffs. The sustainability of this Rural Electrification Sub-Activity is further enhanced by providing MCC Funding for service to be installed between the extended distribution network and households connecting to it. This funding, covering part of the service extension costs (with the balance provided by the executing entities), will be available for the poorest households, ensuring their connection to the extended distribution network.

In the case of the solar photovoltaic systems provided to isolated communities, sustainability is addressed by the feasibility study conducted before implementation, and by the provision of technical assistance to local community association or the company created to coordinate community participation and manage system operations. Private entities will provide system installation, as well as technical assistance. The community associations responsible for O&M will be legal entities registered with SIGET.

The sustainability of projects executed under the Community Infrastructure Sub-Activity will be supported in part by the inclusion of municipal and community contributions (cash and in-kind) totaling at least 20 percent of project costs. This requirement will also help ensure that municipalities and communities will allocate resources for the maintenance of the infrastructure developed under the Community Infrastructure Sub-Activity, and that community demand is reflected in project selection. In addition, project design standards are to be developed in a manner that meets community needs and that leads to feasible O&M costs that reflect local willingness and contractual commitment to pay, thereby ensuring project sustainability.

The environmental and social sustainability of the Human Development Project will be ensured through ongoing consultations with the public regarding the manner in which the Human Development Project is being implemented. The SEA will include an assessment of the activities within the Human Development Project. As necessary, environmental and social analyses (that also include an analysis of the gender impact) will be conducted, as part of the technical survey and design of Project Activities to evaluate the environmental and social impacts, cumulative impacts, and existence of economic and physical displacement, if any. The Governmental shall ensure that any waste generated by the Human Development Project is disposed of in accordance with appropriate waste management plans that conform to the laws of El Salvador and the Environmental Guidelines.

For the Water and Sanitation Sub-Activity, evaluation of hydrological resources will be performed in coordination with MARN to ensure sustainability of the investments. Furthermore, the Government shall ensure, directly or through FOMILENIO (or other Permitted Designee), that environmental and social mitigation measures are developed and implemented for each Project Activity in accordance with the provisions of this Compact and any relevant Supplemental Agreements. FOMILENIO shall ensure that environmental and social assessment responsibilities are included in the bidding documents for the design or supervisory firms, construction firms, independent technical auditing firms and any project management advisors, as needed. In addition, any required EIAs, EMPs, and RAPs, in form and substance satisfactory to MCC, will be developed and implemented under the Project and monitored by FOMILENIO as necessary during implementation. Project Activities, for which MCC disburses funds, should be consistent with the outcomes of the SEA acceptable to MCC, must have all required environmental permits, and must be in compliance with applicable law. The Government shall fund any project-related environmental mitigation costs (including resettlement costs) that are not already covered by MCC Funding. The sustainability of the Human Development Project will be enhanced by institutional capacity building and training on environmental management.

7. Policy; Legal and Regulatory Reform; Government Actions

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Human Development Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) By the time specified in the Disbursement Agreement, the Government shall develop an appropriate watershed management plan(s) acceptable to MCC for the areas targeted by the Water and Sanitation Sub-Activity.

(b) To the extent that MCC Funding is insufficient to meet the Outcome Indicator ''Population with electricity in the Northern Zone'' for the Rural Electrification Sub-Activity, the Government shall provide the necessary resources to meet such Outcome Indicator by the end of the Compact Term.

(c) By the time specified in the Disbursement Agreement, the corresponding Implementing Entities shall present a staffing and equipment plan and implementation schedule, each acceptable to MCC, to manage the Community Development Activity. The plan shall ensure sufficient personnel and organizational structures dedicated to environmental, social, and technical disciplines.

(d) The Government shall ensure that the relevant Implementing Entities for the Community Development Activity update and implement throughout the Compact Term their environmental policies, to the satisfaction of MCC.

(e) The Government shall ensure that property rights in the Northern Zone will be strengthened by the formal registration of land rights and the modernization of the property registry and cadastre in areas affected by the Human Development Project. The Government shall ensure that land title issues are addressed to the satisfaction of MCC during the Compact Term.

(f) The Government shall ensure that the MARN Program Requirements are satisfied as and when specified in Section 6 of Annex I to this Compact.

(g) Currently, students without a primary school completion certificate are not permitted to apply for or enroll in middle technical schools in El Salvador. The Government shall ensure that this requirement is modified to allow individuals with no primary school completion certificate to enroll in selected continuing education and selected professional certificate (non-degree granting) programs.

8. Proposals

Public solicitations for proposals are anticipated to procure goods, works and services, as appropriate, to implement all Project Activities under the Human Development Project. FOMILENIO will develop, subject to MCC approval, a process for consideration of all such proposals. Notwithstanding the foregoing, FOMILENIO may also consider, using a process developed subject to MCC approval, any unsolicited proposals it might receive.

Schedule 2 to Annex I—Productive Development Project

This Schedule 2 generally describes and summarizes the key elements of the project that the Parties intend to implement in furtherance of the Productive Development Objective (the ''Productive Development Project''). Additional details regarding the implementation of the Productive Development Project will be included in the Implementation Documents and in the relevant Supplemental Agreements.

1. Background

Of the 850,000 residents of the Northern Zone (12 percent of the national population), approximately 263,000 are economically active. Poverty is a common denominator among families in the region, where more than half of the households live in poverty and 50,000 households live in extreme poverty. The per capita monthly income of Northern Zone residents is 60 percent of the national average. The largely rural region is composed of 92 municipalities, most encompassing fewer than 2,000 households. Unemployment is pervasive, affecting most age groups. In particular, the difficulties posed by unemployment among young people are aggravated by the lack of education resources in the region. With little hope for increased investment, productivity or employment in the Northern Zone, residents often see migration to the southern part of the country or to other countries as their best option to improve life for themselves and their families.

Approximately 40 percent of the population of the Northern Zone is engaged in low-productivity activities, including the production of traditional crops (maize, beans, forage). Limited technical and business knowledge and limited access to financial resources have inhibited regional economic growth. Only two percent of loans in El Salvador are extended to inhabitants of the Northern Zone, of which only four percent are extended to the agricultural sector.

Studies of El Salvador have found that increased income of rural households is most often attributable to access to markets for higher value goods and services, access to infrastructure, and remittances. The Productive Development Project seeks to increase the incomes of Northern Zone residents by providing technical assistance, training, and financial support to alleviate constraints to high quality production, increased productivity and access to investment capital. The Productive Development Project is intended to help the region jump-start investment, particularly in activities that will benefit the poor and disadvantaged (with special focus on women and youth). Banking institutions in the Northern Zone also will be strengthened as a result of this Project.

2. Summary of Productive Development Project and Related Project Activities

The Productive Development Project will assist with the development of profitable and sustainable productive business ventures, with a primary focus on assisting poor farmers shift to the cultivation of high-value crops, forestry, and animal products. Business development support for micro, small and medium enterprises in other sectors, including tourism and artisanry, will also be provided. The Government, through *Banco Multisectorial de Inversiones (''BMI''),* will be responsible for the implementation of all the Project Activities of the Productive Development Project, consistent with the outcomes of the SEA. The Government, through BMI, will prepare an operations manual (the ''PD Operations Manual'') with respect to the Productive Development Project, which must be approved by MCC and FOMILENIO. The PD Operations Manual shall include, among other things, the rules governing the delivery of subsidized in-kind (material inputs) and technical assistance and environmental and social/gender guidelines.

MCC Funding will support the following Project Activities:

- *Production and Business Services:* To provide technical assistance to poor farmers to shift to high-value agricultural production and forestry strategies and to provide pre-investment studies and technical assistance for the development and implementation of business plans for Project beneficiaries located in the Northern Zone or greatly benefiting the Northern Zone population;
- *Investment Support:* To provide investment capital to competitively selected applicants for business activities located in and benefiting poor inhabitants of the Northern Zone; and
- *Financial Services:* To provide financial enhancements to support increased lending activity by banks and non-bank financial institutions in the Northern Zone.

FOMILENIO will ensure the establishment of an independent investment committee (the ''PD Investment Committee'') to oversee and guide activities within the Production and Business Services Activity and the Investment Support Activity and, to the extent specified in the PD Operations Manual, the Financial Services Activity. The PD Investment Committee will be governed by and must adhere to the PD Operations Manual and will be composed of representatives agreed upon by MCC, FOMILENIO and BMI. The PD Investment Committee will review and make recommendations to FOMILENIO regarding the allocation and use of resources for the Production and Business Services Activity and the Investment Support Activity at various stages of the implementation process.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor the progress of the implementation of the Productive Development Project. Performance against these benchmarks, as well as the overall impact of the Productive Development Project, will be assessed and reported at the intervals to be specified in the M&E Plan, or as otherwise agreed by the Parties, from time to time. The Parties expect that additional indicators will be identified during implementation of the Productive Development Project. The *expected results* from, and the *key benchmarks* to measure progress on, the Productive Development Project, as well as the Project Activities undertaken or funded thereunder, are set forth in Annex III.

Estimated amounts of MCC Funding for each Project Activity for the Productive Development Project are identified in Annex II. Conditions precedent to each Project Activity under the Productive Development Project, and the sequencing of such Project Activities, shall be set forth in the Disbursement Agreement, other Supplemental Agreements or the relevant Implementation Documents.

The following summarizes each Project Activity under the Productive Development Project:

(a) Project Activity: Production and Business Services (the ''Production and Business Services Activity'')

The programs within the Production and Business Services Activity are intended to help poor farmers, organizations and micro-, small, and medium enterprises that benefit poor inhabitants of the Northern Zone successfully transition to higher-profit activities, generating new investment, expanding markets and sales, and creating new jobs in ways that stimulate sustainable economic growth and poverty reduction. Through an international competitive process, FOMILENIO, with technical guidance from BMI, will contract with service

providers (the ''PRONORTE Service Providers'') to carry out the Production and Business Services Activity.

Specifically, MCC Funding will support the following activities for poor farmers, organizations and micro, small, and medium enterprises that benefit poor inhabitants of the Northern Zone:

(i) Investment Planning. The PRONORTE Service Provider will confirm assessments of high return investments, primarily in the agriculture sector. Other sectors will be considered, including tourism and artisanry. These assessments will be used to guide business plan development and technical assistance. The investment planning will: (a) Ensure all investments meet economic viability benchmarks; (b) determine the technical feasibility of the proposed activities; (c) assess the environmental sensitivity and social impact; and (d) propose a detailed strategy for outreach to target male and female beneficiaries in the Northern Zone.

(ii) Assistance to Small Farm Enterprises. The primary focus of this activity is to transform on-farm productive practices of poor farmers by effecting a shift to high-value crops, forestry, and animal products. This objective will be pursued through two related mechanisms: the delivery of on-farm technical assistance by contracted extension services and the provision of material assistance. The outreach plans must be approved by MCC and must incorporate gender analysis. Technical assistance to farmers will likely include training in production management, application of best practices in agriculture (such as complying with sanitary and phytosanitary standards) and forestry (such as forest certification and reduced impact logging), post-harvest management, and market access information. In-kind assistance will include the provision of new crop material and, possibly, livestock, with a significant cost-share by all participants. One potential activity will be the development of forestry through investments in trees as on-farm productive assets for small and medium-sized farms. This activity has additional benefits of soil conservation, strengthening natural resource management and providing potential opportunities for carbon credits. As with other assistance to farmers, this provision of in-kind assistance will be delivered with a significant cost-share by participants in the program. All technical assistance will be in compliance with Salvadoran laws and regulations and the Environmental Guidelines and will encourage farm enterprises to employ environmentally sustainable practices and will disseminate environmental sustainability principles that include guidance on the proper selection, use, storage, and disposal of pesticides. The PRONORTE Service Provider will ensure proper practices to minimize and mitigate the potential negative impacts of any significant land conversion. Any land acquisition and involuntary resettlement involved with this activity will be done in compliance with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

(iii) Business Development Services. Based on PD Investment Committee guidance of focus areas, the PRONORTE Service Providers will undertake outreach and technical assistance and training to support the development of agribusiness and non-agricultural commercial activities, possibly including tourism and artisan products, as validated by the investment planning sub-activity. The objective will be to support the development of efficient, sustainable commercial activities that generate employment and raise rural incomes in the region. Limited assistance may be provided to other enterprises to develop valuable market linkages and networks with target individuals and organizations. The outreach plans must be approved by MCC and must incorporate gender analysis. Technical assistance to new or expanded commercial activities likely will include market access information, business plan development and legal assistance with land title registration. Technical assistance will encourage businesses to employ environmentally sustainable practices and will disseminate environmental sustainability principles. Support to commercial establishments will be delivered, to the extent possible, through private service providers and will include a significant element of cost-sharing by participating entrepreneurs, both of which are critical elements of a strategy to develop a sustainable business development sector.

(b) Project Activity: Investment Support (the ''Investment Support Activity'')

To attract private investment in and various types of financing for high-value economic activities in the Northern Zone, the Investment Support Activity will utilize MCC Funding to support a demand-driven, competitive process to provide capital to critical investments required for successful operation of a business activity that is part of a value chain that will be located in and/or benefit poor inhabitants in the Northern Zone. The goal of the Investment Support Activity is to make investment capital available to poor individuals, and organizations that benefit poor inhabitants of the Northern Zone, who, due to insufficient collateral and lack of liquid assets, are not able to finance their investments. This investment support is intended to reduce poverty by enabling the creation of profitable and sustainable business activities that generate employment and significantly raise income.

Specifically, MCC Funding will support the administration and funding of an investment support program providing investment capital for the development of competitively selected business proposals. The Government, through BMI, will implement the investment support program through a suitable vehicle managed by BMI and funded with grants from FOMILENIO.

The Investment Support Activity will require potential proponents to make proposals to compete for support based on transparent criteria, including, without limitation, a fully developed business plan and the provision of a significant contribution either of their own or of their business partners' resources. These elements help ensure that resources are directed to the most promising business endeavors, encouraging alliances, joint ventures, and other forms of collaboration between more established enterprises and smaller/disadvantaged organizations and individuals in the Northern Zone. This also is expected to lead to faster start-up and increased chances of success and sustainability.

Beneficiaries assisted in developing a business plan under the Production and Business Services Activity may submit those business plans for award consideration under the Investment Support Activity; however, investment support applications may also be submitted by candidates that have not received assistance under the Production and Business Services Activity or otherwise under the Productive Development Project.

Proposals will be reviewed, ranked and recommended for approval by the PD Investment Committee. Minimum eligibility (pass/fail) criteria will be defined subject to MCC approval, including a minimum economic return threshold (returns must be higher than the rate defined in Annex III to this Compact), technical feasibility, and financial need. Proposals will be evaluated according to specified criteria approved by MCC, including criteria with respect to the following: (i) Financial rate of return; (ii) economic rate of return; (iii) co-investment level; (iv) environmental and social

considerations; (v) technical feasibility; and (vi) employment and other community impacts.

The Investment Support Activity will be governed by and must adhere to rules and procedures documented in the PD Operations Manual. The capital investments made must be designed to be liquidated, whether by repurchase by the recipient, fulfillment of a note or contract, purchase by third parties, or in another manner, on terms appropriate for a capital investment as regards the size of planned liquidation payments, and as early as reasonably possible consistent with estimated cash flows of the business activity in which the investment is made, all according to terms established at the time of the award and in adherence to the principles outlined in the PD Operations Manual. At the conclusion of the second year of the Compact Term, an assessment will be made and appropriate changes enacted, if necessary, in the structure and funding of the Investment Support Activity.

Prior to the end of the fourth year of the Compact Term, FOMILENIO and MCC must complete a plan for the disposition of financial assets generated by the Investment Support Activity. This plan must entail either a liquidation of assets or a program to be managed by a fiduciary agent. The selection of the liquidation agent or fiduciary agent must be completed no later than six months prior to the end of the Compact Term. No financial asset created under the Investment Support Activity during the Compact Term can have an original maturity that is later than the date that is nine years from the date of Entry Into Force. All financial assets must be liquidated or transferred (as per the aforementioned plan) prior to the date that is ten years after the date of Entry Into Force.

(c) Project Activity: Financial Services (the ''Financial Services Activity'')

Regulated financial institutions in El Salvador have substantial liquidity, yet only a very small percentage of this liquidity is directed towards activities in the Northern Zone. The Financial Services Activity seeks to increase lending and access to credit and other financial services and to improve the risk profile of micro, small and medium producers and rural entrepreneurs in the Northern Zone.

MCC Funding will support the following programs. The specific terms and conditions of MCC-supported sub-activities under the Financial Services Activity will be set forth in term sheets and other documentation relating to implementation, to be agreed upon by FOMILENIO and MCC.

(i) Guarantee Funds. MCC Funding will support two guarantee programs, as follows:

(1) FOMILENIO will establish a guarantee program, to be administered by the Government, through BMI, based upon the model of El Salvador's Programa de Garanta Agropecuaria (''PROGARA''), a governmental program managed by BMI which provides guarantees to farmers to facilitate access to credit and reduce credit risk for the participating financial institutions. To encourage the participation of financial intermediaries, MCC Funding will be used to pay commissions to financial intermediaries that guarantee loans incurred by producers in the vegetable, fruits and dairy sectors. In addition, MCC Funding will be used to establish a reserve to cover potential defaults of up to 50 percent of loan amount of participating medium size farmers and up to 70 percent of loan amounts for micro and small farmers.[1] These levels will be reevaluated and adjusted as appropriate after the second year of the program.

(2) *Sociedad de Garantías Recíprocas (''SGR'')* is a public-private entity providing bank or commercial loan guarantees for micro, small and medium scale enterprises, such as agroindustries, commercial entities, light manufacturing, tourism and other services which have been assessed and approved by SGR. These guarantees enable enterprises to be eligible to receive loans from participating banks or commercial lenders. MCC Funding will cover incremental SGR expenses associated with expanding the SGR guarantee program in the Northern Zone, as well as a reserve to increase SGR guarantee authority and cover potential defaults.

With respect to the guarantee-related programs discussed in the preceding paragraphs (1) and (2), any amounts provided as a reserve will be transferred to and held in separate reserve accounts in accordance with a disbursement schedule and procedure agreed upon between FOMILENIO, MCC and the relevant Implementing Entity.

Prior to the end of the fourth year of the Compact Term, FOMILENIO and MCC must complete a plan for the disposition of financial assets of these guarantee-related programs. This plan must entail either a liquidation of assets or a program to be managed by a fiduciary agent. The selection of the liquidation agent or fiduciary agent must be completed no later than six months prior to the end of the Compact Term. No loan guaranteed by these guarantee-related programs can have an original maturity that is later than the date that is nine years from the date of Entry Into Force. All financial assets must be liquidated or transferred (as per the aforementioned plan) prior to the date that is ten years after the date of Entry Into Force.

(ii) Agricultural Insurance. MCC Funding will support a crop insurance program for vegetable farmers based in the Northern Zone. Term sheets will be developed by the Government, through, BMI with insurance companies interested in participating in this program. MCC Funding will cover up to 50 percent of the insurance premiums for first-time small vegetable farmers who participate directly in the technical assistance program under the Production and Business Services Activity or who have received a certification of good growing practices from the PRONORTE Service Providers. The payment will be phased out over time. An additional insurance premium support mechanism for small farmers in other sectors may be implemented but will be subject to the outcome of pre-investment studies.

(1) Financial Intermediary Technical Assistance. MCC support will provide specialized, short-term technical assistance to bank, non-bank and non-governmental financial intermediaries in the Northern Zone that are working to expand rural finance and improve credit analysis, introduce new technologies into their service delivery, or develop specialized products (such as leasing, savings, or specialized agricultural credit products) that increase beneficiary access to financial services. Financial intermediaries desiring such assistance will apply on a competitive basis to the PRONORTE Service Providers. The PRONORTE Service Providers may also offer short training workshops on a cost-share basis for financial intermediary staff in order to strengthen financial services delivery capacity in the Northern Zone.

3. Beneficiaries

The principal beneficiaries of the Productive Development Project are expected to be the 55,000 poor people employed in agriculture or non-farm activities including producers, and micro, small and medium companies. Agribusinesses and other micro, small and medium enterprises also will benefit from new or expanded market opportunities created under the Productive Development Project. Underrepresented groups such as small

[1] Micro, small and medium farmers, as defined in official Government statistics.

farmers, women and youth will receive preference in the assessment of potential beneficiaries of the Investment Support Activity.

4. Donor Coordination; Role of Private Sector and Civil Society

Loans and donations programmed by multilateral institutions in 2005 for El Salvador totaled $128.61 million. Out of the planned and on-going donor assistance to El Salvador, the amount targeted for the Northern Zone amounts to $43.5 million from multilateral donors: (a) World Bank—$20.1 million for Land Regularization Program; (b) International Fund for Agricultural Development—$10.8 million for agricultural development; (c) the Central American Bank for Economic Integration—$3.3 million for agricultural development; and (d) IADB—$3.1 million for Environmental Management of the Lempa River Valley.

MCC has consulted IADB on two projects with relevance to the Financial Services Activity. First, the IADB is expecting to approve a micro-finance project of $1.5 million. This IADB project will increase the resources available for on-lending from qualified intermediaries to micro and small enterprises. These intermediaries in turn will be eligible for participating in the PROGARA guarantee program, and therefore will have a ready source of funds available for lending to potential guarantees beneficiaries of the Financial Services Activity.

Second, IADB has approved a regional technical assistance program for improving agricultural insurance programs in Central America. The program seeks to strengthen the regulatory and legal framework for agricultural insurance in the region; develop a platform to systematize climatologic information for risk analysis, and design innovative insurance products for agriculture. Although the Financial Services Activity will not be directly affected by this IADB project, the development of better risk analysis tools will be a positive factor for the growth of the agricultural insurance market in El Salvador.

The World Bank is providing advisory and financial assistance to complete the SEA related to the Program, the first of its kind led by MARN.

Bilateral assistance in the Northern Zone amounts to $30 million, comprised of assistance from the European Union ($24.7 million to support a bi-national program), GTZ ($800,000 for environmental management), and China, Japan and USAID ($3.5 million for agricultural development).

Japan's recent four-year, $90 million loan activity for the Port of Cutuco is directly relevant to the Productive Development Project, as this investment will enhance the importance of the Northern Zone as a logistical corridor and source for labor and agricultural commodities.

The Productive Development Project will complement ongoing donor activities by significantly increasing the amount of donor assistance dedicated to economic growth activities in the Northern Zone. Project implementers will participate in donor coordination through the existing mechanism and seek to work closely with all donor entities implementing activities in the Northern Zone.

5. U.S. Agency for International Development

USAID is presently the largest bilateral donor to El Salvador ($34.23 million). MCC coordinated closely with USAID staff in determining the feasibility of the Productive Development Project and will continue such collaboration during Compact implementation, particularly in connection with USAID's work in the following four strategic areas:

(a) Export Promotion. USAID's ExPro project trains micro, small and medium enterprises, mostly outside of the Northern Zone, in business and export management. Collaboration related to certain components of the Productive Development Project and the ExPro project are likely, particularly with respect to training efforts, strategic planning, business venture brokering, and participation in international trade fairs.

(b) Artisan Development. This USAID program assists artisans, a significant number of which reside in the Northern Zone, with improved design techniques, business management training, increased sales opportunities through international buyer missions and regional sales promotion events.

(c) Agriculture Diversification. This USAID project encourages diversification of coffee production to the production of specialty coffees and horticultural products through technical assistance.

(d) Financial Services. The Financial Services Activity will benefit from two phases of a USAID project that strengthened micro-finance institutions in the poorest areas of El Salvador: (i) FOMIR, a project considered highly successful, contributed to the improvement of the quality, availability and variety of micro-finance products offered throughout the country; many of these micro-finance institutions will be eligible for using the guarantee mechanisms in the MCC-funded agricultural guarantee program available under the Financial Services Activity, thereby expanding the reach of the FOMIR program into the rural areas; and (ii) a recently initiated USAID program to assist regulated banks in offering better service and products to small and medium enterprises; this USAID program will improve services provided by banks to small and medium enterprises; the Financial Services Activity will benefit from this new interest in small and medium enterprises, especially in the SGR guarantee program, which utilizes the regulated banking sector as intermediaries for its guarantees.

In addition, USAID has a newly established, active Development Credit Authority (''DCA'') guarantee program in El Salvador. The program will be working with two banks, ProCredit and Banco Salvadoreño. The DCA program is not limited in terms of geography, so it is expected that most of the guarantees will be concentrated in the major metropolitan areas of the country. For that reason, and because of the limited number of banks participating in the DCA program, it is not expected that the MCC guarantee programs and the USAID guarantee program of the Financial Services Activity will have much overlap during project execution.

6. Sustainability

The environmental and social sustainability of the Productive Development Project will be assured through ongoing consultations with the public regarding the manner in which the Productive Development Project is being implemented. The activities funded under the Productive Development Project will be consistent with the outcomes of the SEA. Any land acquisition and involuntary resettlement required for the Productive Development Project will be consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12). Throughout the Compact Term, the Government shall ensure, directly or through FOMILENIO (or other Permitted Designee), that requisite environmental, social, and gender analyses are conducted, as needed, as part of the technical survey and design of the Project Activities and that environmental and social mitigation measures are developed and implemented in accordance with the provisions of this Compact and related Supplemental Agreements. In connection with Productive

Development Project procurements, FOMILENIO will ensure that environmental and social assessment responsibilities are included in the bidding documents for the design or supervisory firms, the construction firms, the independent technical auditing firms and any project management advisors. In addition, any required EIAs, EMPs, and RAPs, in form and substance satisfactory to MCC, will be developed and implemented under the Project. FOMILENIO will require environmental monitoring of the subprojects and submittal to MCC of periodic reports on the implementation of the environmental procedures and environmental performance. Subprojects, for which MCC disburses funds, must have all environmental permits required by Salvadoran law. The sustainability of the Productive Development Project will be enhanced by institutional capacity building and training on environmental management.

The competitive selection process of Investment Support Activity incorporates the MCC goal of sustainability. Evaluations based on business plan feasibility will increase the likelihood of financial sustainability beyond the Compact Term and will support motivated entrepreneurs and promising business endeavors. Such evaluations also will take into consideration (a) competitive co-investment in order to leverage private investment and ensure commitment on behalf of beneficiaries; and (b) the environmental and social safeguards to ensure sustainable use of the natural resource base and consideration of social dynamics.

Additionally, the recipients under the Investment Support Activity will receive customized technical assistance to encourage (a) the adoption of sound technical and business management practices for the development and operation of the investment; and (b) the establishment of legal entities and financial mechanisms necessary to provide maintenance, replacement and improvement of investments over time. Technical training of producers and technical experts also will improve the human resource base, thereby improving the quality of local services provided along targeted value chains.

The Financial Services Activity has been designed to be financially sustainable at the end of the Compact Term. In the two guarantee programs, MCC Funding will be used principally to increase the guarantee authority by creating a reserve that would earn income until the funds are needed for losses under the program. As long as the losses are contained at a manageable level, these MCC resources will remain when the Compact expires, and could be used to capitalize the guarantee funds permanently or for some other use. The relatively small amount of MCC Funding that could be considered expenses are the financial incentives for the intermediaries, in the case of the MCC-funded agricultural guarantee program, and the incremental expenses for starting up and promoting the guarantee program in the northern region, in the case of SGR. In both of these cases, the payments may be discontinued after three years, when it is expected that the critical mass will be reached to permit reaching operational break-even for the guarantee programs. From that point, the normal charges for commissions and fees would be sufficient to cover the expenses of the guarantee programs.

The agricultural insurance program will pay up to 50 percent of the premiums for insuring selected vegetable crops. This program will test the ability of the producers and insurance companies to reach appropriate and affordable levels of premiums according to the losses incurred over a reasonable period of time. This ability will be assisted by the aforementioned IADB project, which is intended to strengthen all aspects of the agricultural insurance industry.

7. Policy; Legal and Regulatory Reform; Government Actions

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Productive Development Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) The Government shall ensure that property rights in the Northern Zone will be strengthened by the formal registration of land rights and the modernization of the property registry and cadastre in municipalities and/or departments benefiting directly from the Productive Development Project. The Government shall ensure, and MCC will monitor, that land title issues are addressed to the satisfaction of MCC during the Compact Term.

(b) The Government shall ensure that the MARN Program Requirements are satisfied as and when specified in Section 6 of Annex I to this Compact.

(c) The Government shall ensure that BMI creates the proper financial instruments and mechanisms to implement the Investment Support Activity.

8. Proposals

Public solicitations for proposals are anticipated to procure goods, works and services, as appropriate, to implement all Project Activities under the Productive Development Project. FOMILENIO will develop, subject to MCC approval, a process for consideration of all such proposals. Notwithstanding the foregoing, FOMILENIO may also consider, using a process developed subject to MCC approval, any unsolicited proposals it might receive.

Schedule 3 to Annex I—Connectivity Project

This Schedule 3 generally describes and summarizes the key elements of the project that the Parties intend to implement in furtherance of the Connectivity Objective (the ''Connectivity Project''). Additional details regarding the implementation of the Connectivity Project will be included in the Implementation Documents and in relevant Supplemental Agreements.

1. Background

The Connectivity Project addresses the issue of the Northern Zone's physical isolation in an attempt to fully integrate this region into the development plans of El Salvador. The isolation of the Northern Zone is an impediment to its development and a contributor to the widespread poverty that affects more than half of households in the Northern Zone. Improving transportation connectivity in the Northern Zone will stimulate human and productive development by reducing the time and cost of travel, facilitating access to markets, encouraging regional development and productive land use, attracting investment, and improving access to health and education services.

Current road conditions and, in some places, the lack of roads have contributed to the isolation of the Northern Zone. With the Connectivity Project, 57 municipal capitals within El Salvador will be linked by a reliable, paved road. Currently, 23 of the 57 municipalities have only unpaved dirt roads. During periods of heavy rain, the current roads—especially unpaved roads—can become impassable. In the Northern Zone, many neighboring communities do not have direct, reliable transport routes connecting them, so community members must travel great distances, or over difficult conditions, to access services or markets in neighboring communities. The Connectivity Project will provide

significantly greater access that will alleviate these difficulties as well as decrease travel time and vehicle operation and maintenance costs.

2. Summary of Connectivity Project and Related Project Activities

The Connectivity Project will apply MCC Funding to the completion of a two-lane transnational highway across the Northern Zone (the ''Northern Transnational Highway'' or ''NTH''), which will serve as a transport artery within the Northern Zone and will augment international connectivity through two new border crossings, one with Honduras in the east and one with Guatemala in the west. In addition, the Connectivity Project will fund improvements to a strategic network of connecting roads (the ''Network of Connecting Roads'' or ''NCR''). The Network of Connecting Roads will provide reliable paved roads to foster the connection of remote municipalities and rural villages of the Northern Zone with the NTH and other regional and national traffic routes.

MCC Funding will support the following Project Activities:

- *Northern Transnational Highway:* To design and construct openings of approximately 50 km of secondary [1] roads; to improve approximately 160 km to secondary road standards; and to rehabilitate approximately 80 km to secondary road standards;[2] and
- *Network of Connecting Roads:* To improve approximately 240 km to modified tertiary road [3] standards.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor the progress of the implementation of the Connectivity Project. Performance against these benchmarks, as well as the overall impact of the Connectivity Project, will be assessed and reported at the intervals to be specified in the M&E Plan, or as otherwise agreed by the Parties, from time to time. The Parties expect that additional indicators will be identified during implementation of the Connectivity Project. The *expected results* from, and the *key benchmarks* to measure progress on, the Connectivity Project, as well as the Project Activities undertaken or funded thereunder, are set forth in Annex III.

Estimated amounts of MCC Funding for each Project Activity for the Connectivity Project are identified in Annex II. Conditions precedent to each Project Activity under the Connectivity Project, and the sequencing of such Project Activities, shall be set forth in the Disbursement Agreement, other Supplemental Agreements or the relevant Implementation Documents.

The following summarizes each Project Activity under the Connectivity Project:

(a) Project Activity: Northern Transnational Highway (the ''Northern Transnational Highway Activity'')

The Northern Transnational Highway will provide contiguous and reliable access to communities in the Northern Zone, as well as to main transport corridors, thereby enabling the Northern Zone to participate more fully in the national and regional economy. When completed, the NTH will extend across El Salvador from Guatemala in the west to Honduras in the east, and will connect with roads to southern El Salvador, to the new Pacific Ocean port at La Union in eastern El Salvador and to the Caribbean ports in Guatemala (Puerto Barrios) and Honduras (Puerto Cortez). Primarily, the NTH will follow a course of existing roads; with only 50 km of new roads needed to connect the different sections of road to form a continuous transnational paved surface.

As El Salvador increases its participation in international and regional markets through the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA–DR) and Plan Puebla-Panamá activities, the NTH will provide valuable access to a wider range of opportunities for the communities of the Northern Zone. Reliable and efficient transportation schemes are essential to El Salvador's participation in international and regional markets, and especially essential to small, local producers and suppliers. Currently, the Northern Zone has neither a reliable nor an efficient transport route for the goods and services of the communities in the Northern Zone. The Northern Transnational Highway Activity will provide wide-ranging benefits, including helping produce to arrive at markets undamaged and in a timely manner, allowing efficient access of public services such as ambulances and public transportation, and reducing vehicle operation and maintenance costs.

Subject to modifications based on findings of the feasibility study, the NTH can be described by road segments, as follows:

Segments of NTH	Length (km)
La Virgen (El Salvador—Guatemala border)—Nueva Concepcion	56.3
Chalatenango—Nuevo Eden de San Juan	99.3
Nuevo Eden de San Juan—Oscicala	62.9
Oscicala—Concepción de Oriente (El Salvador—Honduras border)	72.4
Total	290.8

Specifically, MCC Funding will support the following:

(i) Design; environmental assessment, as needed (to include, if necessary, supplemental EIAs, EMPs, and RAPs); and construction activities for the opening, improvement, or rehabilitation of approximately 290 km of the NTH;

(ii) Implementation of environmental and social mitigation measures as identified in the EIA, or as otherwise may be appropriate, to include compensation for physical and economic displacement of individuals, residences and businesses affected by such rehabilitation and construction, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12), and implementation of HIV/AIDS awareness plans satisfactory to MCC;

(iii) Design and construction of drainage structures, as may be required;

(iv) Design and construction of all necessary new bridges and rehabilitation of existing bridge structures, as may be required;

(v) Posting of signage and incorporating other safety improvements;

(vi) Project management, supervision and auditing of such improvements and upgrades; and

(vii) Training in environmental management.

[1] ''Secondary'' roads are composed of a paved traveled way of two 3.25 m wide lanes (6.50 m traveled way) and 1.5 m wide shoulders, and include surface drainage.

[2] The work to be performed on the NTH and the NCR can be classified by the following standard descriptions: (i) ''improvement'' means that the geometric characteristics of an existing road are changed to raise the standards of the road; this type of work implies widening of lanes, adding or widening shoulders, increasing the minimum radius of curvature, decreasing maximum slopes and paving unpaved roads; (ii) ''Rehabilitation'' means that the general geometric characteristics, except width, of an existing paved road are maintained; this work requires improving pavement surface or pavement structure or drainage; and (iii) ''opening'' a new road means that no road exists; in connection with such work cuts often occur on the slopes in mountainous zones and significant modification of the topography often occurs, at least within the area of influence of the road.

[3] ''Modified tertiary roads'' are roads that have a paved traveled way of 6.0 m and 1.0 m shoulders, and include drainage structures. These modified tertiary roads will contribute greatly to improving mobility in the Northern Zone and to the success of the Human Development Project and Productive Development Project.

(b) Project Activity: Strategic Network of Connecting Roads (the ''Connecting Roads Activity'')

Under current conditions, many rural roads in the Northern Zone are virtually impassable without a four-wheel drive vehicle. In addition, considering the high rainfall and flooding levels common in the region, these roads are not only inefficient, but also dangerous.

By improving approximately 240 km of primarily dirt roads to modified tertiary road status, the Connecting Roads Activity will connect vast rural areas of the Northern Zone with the NTH and with the existing paved road network. The improvement of connecting roads will improve transportation linkage and reduce transportation costs and time. Northern Zone residents will have mobility within their hometowns and will have access to territories beyond their usual boundaries.

Subject to modifications based on findings of the feasibility study, NCR can be described by road segments, as follows:

Road segments	Length (km)
VT1: San José Cancasque—Potonico—Cerrón Grande—Jutiapa—Tejutepeque y Ramal	23.04
VT4: Ilobasco—Presa 5 de Noviembre	32.4
VT8: S. Miguel de Mercedes—S. Antonio Los Ranchos—Potonico	14.93
VT16: Nombre de Jesús—Arcatao	16.87
VT5: Masahuat—Santa Rosa Guachipilín	12.25
VT6: Nueva Concepción—Texistepeque	27.29
VT7: San Fernando—Dulce Nombre de María	31
VT11: San Francisco Morazán—Tejutla—El Paraíso	15.03
VT2: Sesori—Et. SAM31E (Nuevo Edén de San Juan)	15.3
VT3: Anamorós—Lislique	8.5
VT13: Perquín—Paso del Mono	13.17
VT15: CA:7—Arambala—Joateca	17.8
VT17: SAM33, Cantón El Carrizal—San Antonio	7.15
VT18: MOR13W, San Simón—San Isidro	3.65
Total	238.38

Specifically, MCC Funding will support the following:

(i) Design; environmental assessment, as needed (to include, if necessary, supplemental EIAs, EMPs, and RAPs); and construction activities for the improvement of approximately 240 km of the NCR;

(ii) Implementation of environmental and social mitigation measures as identified in the EIA, or as otherwise may be appropriate, to include compensation for physical and economic displacement of individuals, residences and businesses affected by such rehabilitation and construction, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12), and implementation of HIV/AIDS awareness plans satisfactory to MCC;

(iii) Design and construction of drainage structures, as may be required;

(iv) Design and construction of all necessary new bridges and rehabilitation of existing bridge structures, as may be required;

(v) Posting of signage and incorporating other safety improvements;

(vi) Project management, supervision and auditing of such improvements and upgrades; and

(vii) Training in environmental management.

3. Beneficiaries

The direct and immediate beneficiaries of the Connectivity Project will be the inhabitants of the Northern Zone, which covers an area of 7,500 square kilometers, over one-third of the national territory. Approximately 600,000 inhabitants of the Northern Zone are estimated to benefit, 52 percent of which are women. In addition, Salvadorans beyond the Northern Zone's boundaries will benefit from the integration of the Northern Zone and its people into a sustainable development process for El Salvador and the Central American region. The improvements to the road network in the Northern Zone will contribute to improving life in six departments of the country.

4. Donor Coordination; Role of Civil Society

The Connectivity Project forms an integral part of an international effort to improve the road network of El Salvador. The total estimated cost of planned improvements to the network is approximately $331 million. The Government has petitioned the multilateral development banks and bilateral donor community for cooperation in this effort. IADB and the European Union are expected to provide substantial assistance to complement the activities of the Government and the activities funded by MCC. The World Bank is providing advisory and financial assistance to complete the SEA related to the Program, the first of its kind led by MARN.

In developing the Connectivity Project, MCC held coordination meetings with many in the donor community. MCC provided information on the proposed projects and gathered important information regarding the relationship between the Government and the donor organizations, as well as the planned donor activity. The interventions financed by other entities do not conflict with the Connectivity Project. Rather, they contribute to create a more comprehensive road network, by incorporating roads that connect to the NTH or roads of the NCR to smaller towns.

The consultations conducted by CND revealed broad interest in addressing the Northern Zone's isolation and limited connectivity. Diverse segments of Salvadoran population and institutions agree on the importance of the Connectivity Project in integrating the Northern Zone and fostering regional and national development.

Civil society will play a vital role in the overall success and sustainability of the Connectivity Project. Primarily as independent agents, NGOs, community organizations, and local environmental units are expected to aid in the informal monitoring of construction activities and post-construction activity along the NTH and the NCR. Ongoing public consultation by the Ministry of Public Works (''MOP'') and MARN will provide the avenue for public discourse and consultation regarding the design,

environmental assessment, and implementation of Project Activities throughout the Compact Term.

5. U.S. Agency for International Development

USAID currently does not focus specifically on road network interventions in El Salvador. However, FOMILENIO will continue to dialogue with USAID to identify potential opportunities for coordination with respect to the Connectivity Project. MCC has consulted with USAID throughout the due diligence process on HIV/AIDS-related concerns. USAID does fund several regional HIV/AIDS prevention initiatives that have offices and activities in El Salvador. These include *Proyecto AccionSIDA de Centroamerica* and the Pan American Social Marketing Organization. With increased access in the Northern Zone due to these Project Activities and the inevitable influx of construction workers to the Northern Zone, these programs may provide essential services to the communities of the Northern Zone in conjunction with the activities of the Connectivity Project.

6. Sustainability

MOP is the principal institution responsible for the effective and sustainable management of the road network in El Salvador. As such, MOP plays a central role in coordinating and regulating the activities of *Fondo de Conservación Vial (''FOVIAL''),* an autonomous entity established in 2000 by the Government. FOVIAL will conduct periodic and routine maintenance on the roads constructed under the Connectivity Project.

FOVIAL is funded by a mandated surcharge of 20 cents per gallon of fuel sold. An extensive campaign, which includes distribution of brochures, newspapers inserts, television and radio announcements, is continuously conducted to explain to Salvadorans the use and benefits of this fuel surcharge.

The environmental and social sustainability of the Connectivity Project will be assured through ongoing consultations with the public regarding the manner in which the Connectivity Project is being implemented. In addition, the SEA conducted for the Northern Zone will include an assessment of the Project Activities within the Connectivity Project. Throughout the Compact Term, the Government will ensure, directly or through FOMILENIO (or other Permitted Designee), that environmental and social mitigation measures are developed and implemented for the Project in accordance with the provisions of this Compact and any relevant Supplemental Agreements. FOMILENIO will monitor the implementation of the mitigation measures, as necessary, during implementation. In connection with Connectivity Project procurements, FOMILENIO will ensure that environmental and social assessment responsibilities are included in the bidding documents for the design or supervisory firms, the construction firms, the independent technical auditing firms and any project management advisors. Any MCC Disbursements for construction related to the Connectivity Project will be contingent upon completion of the EIA, EMPs, any required RAPs and HIV/AIDS awareness plans and issuance of environmental permits, as needed, or any Government statutory requirements, satisfactory to MCC. The sustainability of the Connectivity Project will be enhanced by institutional capacity building and training on environmental management.

7. Policy; Legal and Regulatory Reform; Government Actions

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Connectivity Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) The Government shall ensure that MOP prepares and implements a staffing and equipment plan, acceptable to MCC, to enhance MOP's capabilities for managing the Connectivity Project. To the extent not covered by MCC Funding allocated for such purpose in the Financial Plan, the Government shall provide the resources necessary for MOP to implement the staffing and equipment plan as further specified in the Disbursement Agreement.

(b) By the time specified in the Disbursement Agreement, the Government shall ensure that MOP creates and fills at least three additional permanent staff positions in MOP's environmental management sub-unit as described in the staffing plan described in paragraph (a) above. The environmental management sub-unit shall serve as the MOP representative concerning environmental aspects of the Connectivity Project and other environmental management activities of MOP. The Government shall provide appropriate resources to MOP for such permanent staff positions.

(c) By the time specified in the Disbursement Agreement, the Government shall prepare, and shall submit to MCC, a detailed maintenance plan acceptable to MCC for all roads included in the Connectivity Project. Such maintenance plan shall set forth, with respect to all roads included in the Connectivity Project, the schedule of and the budget requirements for both routine and periodic maintenance of all such roads during the Compact Term and thereafter for the life of such roads. All such maintenance shall be undertaken as part of FOVIAL's general maintenance program for the national road network. The Government shall provide adequate funding for all such maintenance of the roads included in the Connectivity Project during the Compact Term; thereafter, the Government expects to provide adequate funding for all such maintenance of the roads included in the Connectivity Project for the remaining life of such roads.

(d) By the time specified in the Disbursement Agreement, the Government shall ensure that an implementation plan acceptable to MCC for sustainable border control measures at all new border crossings is prepared in coordination with the Bureau for International Narcotics and Law Enforcement Affairs, the Department of Homeland Security and the Drug Enforcement Agency at the U.S. Embassy.

(e) The Government shall ensure that MOP updates its bridge management system for the monitoring and maintenance tracking of all bridge structures included in the national road network. By the time specified in the Disbursement Agreement, MOP shall provide a bridge replacement or rehabilitation plan acceptable to MCC for the existing bridges of the Northern Zone road network that are outside of the NTH and NCR and are identified as unsafe. The Government shall provide adequate funding for completion of construction activities to replace or rehabilitate the unsafe bridges identified in such plan by the end of the fourth year of this Compact.

(f) The Government shall conduct, at its own expense, an EIA, a feasibility study, and partial design activities, to include the development of EMPs, any required RAPs, and HIV/AIDS awareness plans to be implemented under the Connectivity Project, each to the satisfaction of MCC. The EIA, which is part of the feasibility and design study, will determine the environmental, social, and gender impacts; cumulative and induced impacts; and existence of economic and physical displacement, if any. Further, to the extent possible, the EIA and

design activities will be consistent with the outcomes of the SEA. Any required RAPs will be developed and implemented in compliance with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

(g) The Government shall provide assurance that all new bridge projects resulting from the feasibility study and final design of the NTH and the NCR will receive adequate funding for completion if the resulting costs exceed the total amount allocated in this Compact for the Connectivity Project.

(h) The Government shall ensure that property rights in the Northern Zone will be strengthened by the formal registration of land rights and the modernization of the property registry and cadastre in areas adjacent to the corridor of the roads improved under the Connectivity Project. The Government shall ensure that land title issues are addressed to the satisfaction of MCC during the Compact Term.

(i) The Government shall ensure that the MARN Program Requirements are satisfied as and when specified in Section 6 of Annex I.

Annex II—Summary of Multi-Year Financial Plan

This Annex II to the Compact (the ''Financial Plan Annex'') summarizes the Multi-Year Financial Plan for the Program. Each capitalized term in this Financial Plan Annex shall have the same meaning given such term elsewhere in this Compact. Unless otherwise expressly stated, each Section reference herein is to the relevant Section of the main body of this Compact.

1. General

A multi-year financial plan summary (''Multi-Year Financial Plan Summary'') is attached hereto as Exhibit A. By such time as specified in the Disbursement Agreement, FOMILENIO will adopt, subject to MCC approval, a Multi-Year Financial Plan that includes, in addition to the multi-year summary of estimated MCC Funding and the Government's contribution of funds and resources, an estimated draw-down rate for the first year of the Compact Term based on the achievement of performance milestones, as appropriate, and the satisfaction or waiver of conditions precedent. Each year, at least thirty (30) days prior to the anniversary of Entry into Force, the Parties shall mutually agree in writing to a Detailed Budget for the upcoming year of the Program, which shall include a more detailed budget for such year, taking into account the status of the Program at such time and making any necessary adjustments to the Multi-Year Financial Plan.

2. Implementation and Oversight

The Multi-Year Financial Plan and each Detailed Budget shall be implemented by FOMILENIO, consistent with the approval and oversight rights of MCC and the Government as provided in this Compact, the Governing Documents and the Disbursement Agreement.

3. MCC Contribution

The Multi-Year Financial Plan Summary identifies the estimated annual contribution of MCC Funding for Program administration, M&E and each Project.

4. Modifications

The Parties recognize that the anticipated distribution of MCC Funding between and among the various activities for Program administration, M&E, the Projects and the Project Activities will likely require adjustment from time to time during the Compact Term. In order to preserve flexibility in the administration of the Program, as provided in Section 4(a)(iv) of Annex I, the Parties may, upon agreement of the Parties in writing and without amending this Compact, change the designations and allocations of funds among the Projects, the Project Activities, or any activity under Program administration or M&E, or between a Project identified as of Entry into Force and a new project; provided, however, that such reallocation (a) is consistent with the Objectives and the Implementation Documents, (b) shall not materially adversely impact the applicable Project, Project Activity (or any component thereof), or any activity under Program administration or M&E as specified in this Annex II, (c) shall not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact, and (d) shall not cause the Government's obligations or responsibilities or overall contribution of resources to be less than specified in Section 2.2(a) of this Compact, this Annex II or elsewhere in the Compact.

5. Conditions Precedent; Sequencing

MCC Funding will be disbursed in tranches. The obligation of MCC to approve MCC Disbursements for the Program is subject to satisfactory progress in achieving the Objectives and to the fulfillment or waiver of any conditions precedent specified in the Disbursement Agreement for the relevant activity under the Program. The sequencing of Project Activities or sub-activities and other aspects of how the Parties intend the Program to be implemented will be set forth in the Implementation Documents, including the Work Plan for the Program (and each component thereof), and MCC Disbursements and Re-Disbursements will be made consistent with such sequencing.

6. Government Contribution

During the Compact Term, the Government shall make an appropriate contribution, relative to its national budget and taking into account prevailing economic conditions, toward meeting the Objectives of this Compact. Such contribution shall be in addition to the Government's spending allocated toward such Objectives in its budget for the year immediately preceding the establishment of this Compact. The Government has developed the Northern Zone Investment Plan, which includes anticipated contributions from the Government's national budget, as well as MCC Funding and other international contributions. According to the Northern Zone Investment Plan, the Government anticipates making contributions from its national budget of approximately US$ 327 million over the Compact Term, including: (i) Approximately US$ 100 million toward the Human Development Objective; (ii) approximately US$ 180 million toward the Productive Development Objective; and (iii) US$ 46 million toward the Connectivity Objective. The Government's contribution remains subject to any legal requirements in El Salvador for the budgeting and appropriation of such contribution, including approval of the Government's annual budget by the Asamblea Legislativa. The Government's contribution may include in-kind and financial contributions (including obligations of the Government on any debt incurred toward meeting the Objectives) that the Government shall make in the satisfaction of the Government Responsibilities. The Parties may set forth in appropriate Supplemental Agreements certain requirements regarding the Government's contribution, which requirements may be conditions precedent to MCC Disbursements.

EXHIBIT A.—MULTI-YEAR FINANCIAL PLAN SUMMARY

[Millions US$]

Component	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Human Development Project.						
A. Education and Training Activity	$2.91	$9.53	$7.15	$4.24	$3.88	$27.71
B. Community Development Activity	2.71	13.65	16.89	16.78	17.34	67.37
Sub-Total	5.62	23.18	24.04	21.02	21.22	95.07
2. Productive Development Project.						
A. Production and Business Services Activity	9.53	11.94	12.04	13.63	9.77	56.92
B. Investment Support Activity	.....	4.20	7.35	7.35	2.10	21.00
C. Financial Services Activity	4.02	2.14	1.36	1.02	1.00	9.54
Sub-Total	13.55	18.28	20.76	22.01	12.87	87.47
3. Connectivity Project.						
A. Northern Transnational Highway Activity	15.09	52.88	57.85	11.93	2.21	139.95
B. Connecting Roads Activity	1.36	29.91	53.73	6.87	1.74	93.61
Sub-Total	16.44	82.79	111.58	18.80	3.95	233.56
4. Accountability.						
A. Monitoring and Evaluation	1.61	1.38	1.30	2.12	3.47	9.88
B. Audit	0.45	1.51	1.89	0.77	0.50	5.11
C. Fiscal and Procurement Oversight	0.79	2.77	3.48	1.38	0.85	9.27
Sub-Total	2.85	5.65	6.67	4.27	4.82	24.26
5. Program Administration	4.35	4.07	4.18	4.03	3.95	20.59
Total Estimated Amount of MCC Funding	42.82	133.97	167.22	70.12	46.81	460.94

Annex III—Description of the M&E Plan

This Annex III to the Compact (the ''M&E Annex'') generally describes the components of the M&E Plan for the Program. Except as defined in this M&E Annex, each capitalized term in this M&E Annex shall have the same meaning given such term elsewhere in this Compact.

1. Overview

MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee) shall formulate, agree to and the Government shall implement, or cause to be implemented, an M&E Plan that specifies (a) how progress toward the Compact Goal, Objectives, and the intermediate results of each Project and Project Activity set forth in this M&E Annex (the ''Outcomes'') will be monitored (the ''Monitoring Component''); (b) a methodology, process and timeline for the evaluation of planned, ongoing, or completed Projects and Project Activities to determine their efficiency, effectiveness, impact and sustainability (the ''Evaluation Component''); and (c) other components of the M&E Plan described below. Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as periodically generated reports, will be made publicly available on the FOMILENIO Web site and elsewhere.

2. Monitoring Component

To monitor progress toward the achievement of the Compact Goal, Objectives, and Outcomes, the Monitoring Component of the M&E Plan shall identify (a) the Indicators, (b) the party or parties responsible, the timeline, and the instrument for collecting data and reporting on each Indicator to FOMILENIO, and (c) the method by which the reported data will be validated.

(a) Indicators. The M&E Plan shall measure the results of the Program using quantitative, objective and reliable data (''Indicators''). Each Indicator will have one or more expected results that specify the expected value and the expected time by which each result will be achieved (each, a ''Target''). In addition to the targets contained in this Annex, annual and quarterly targets will be included in the M&E Plan, as appropriate. The M&E Plan will measure and report on Indicators at four levels. First, the Indicators for the Compact Goal (each, a ''Goal Indicator'') will measure the impact of the overall Program and each Project. Second, the Indicators for each Objective (each, an ''Objective Indicator'') will measure the final results of the Projects to monitor their success in meeting each of the Objectives, including results for the intended beneficiaries identified in accordance with Annex I (collectively, the ''Beneficiaries''). Third, intermediate Indicators (each, an ''Outcome Indicator'') will measure the intermediate results achieved under each of the Project Activities to provide an early measure of the likely impact of the Project Activities. A fourth level of Indicators (each, an ''Output Indicator'') will be included in the M&E Plan to measure the direct outputs of the Project Activities. All Indicators will be disaggregated by gender, income level and age, to the extent practicable. Subject to prior written approval from MCC, FOMILENIO may add Indicators or refine the Targets of existing Indicators.

GOAL INDICATORS AND DEFINITIONS FOR THE PROGRAM

Goal Indicators	
Poverty rate in the Northern Zone	Percentage of residents of the Northern Zone whose income falls below the poverty line as calculated by the General Directorate for Statistics and Census ("DIGESTYC").
Annual per capita income of Program beneficiaries in the Northern Zone.	Average annual per capita income of Program beneficiaries in the Northern Zone.
Gross domestic product (GDP) of the Northern Zone	A special study shall be contracted by FOMILENIO to develop a methodology to calculate GDP for the Northern Zone.

COMPACT GOAL BASELINES AND TARGETS FOR THE PROGRAM

Goal Indicators [1]	2004	Year 5	Year 10
Poverty rate in the Northern Zone.			
With the Program	53%	41%	34%
Without the Program	53%	52%	51%
Annual per capita income of Program beneficiaries in the Northern Zone [2].			
With the Program	$720	$884 [3]	$978 [4]
Without the Program	$720	$736	$748
Gross domestic product of the Northern Zone	TBD [5]	TBD	TBD

[1] The targets for the Goal Indicators may be revised during implementation after more data is collected on poverty and income in the Northern Zone.
[2] The targets is in constant 2004 prices. The deflator will be the Consumer Price Index as calculated by DIGESTYC.
[3] This is a 20% increase in income with the Program compared to the "without the Program" scenario.
[4] This is a 30% increase in income with the Program compared to the "without the Program" scenario.
[5] The baseline and targets for this Goal Indicator will be determined after the special study to develop a methodology for calculating the Goal Indicator is conducted and the methodology has been approved by MCC.

HUMAN DEVELOPMENT PROJECT INDICATORS AND DEFINITIONS PROJECT ACTIVITY: EDUCATION AND TRAINING

Goal Indicators:	
Incremental income of graduates of the Chalatenango Center.	Percentage of increase in yearly income earned by graduates of the Chalatenango Center compared to graduates of 12th grade.
Incremental income of graduates of middle technical schools.	Percentage of increase in yearly income earned by graduates of middle technical schools compared to graduates of 9th grade.
Objective Indicators:	
Employment rate of graduates of the Chalatenango Center.	Percentage of graduates of the Chalatenango Center (functioning as a MEGATEC institute) employed in field of study one year after graduation.
Employment rate of graduates of middle technical schools.	Percentage of graduates of middle technical schools remodeled by the Project Activity employed in field of study one year after graduation.
Outcome Indicators:	
Students of the Chalatenango Center	Total number of students enrolled in the Chalatenango Center (functioning as a MEGATEC institute).
Students of middle technical schools	Total number of students enrolled in the middle technical schools included in the Project Activity.
Students of non-formal training	Number of students who participate in non-formal training as part of the Project Activity.

HUMAN DEVELOPMENT PROJECT BASELINES AND TARGETS PROJECT ACTIVITY: EDUCATION AND TRAINING

Goal Indicators		Year 5
Incremental income of graduates of the Chalatenango Center		42%
Incremental income of graduates of middle technical schools		37%
Objective Indicators	2005	Year 5
Employment rate of graduates of the Chalatenango Center	n.a. [6]	70% [7]
Employment rate of graduates of middle technical schools	50%	50% [8]
Outcome Indicators	2005	Year 5
Students of the Chalatenango Center (not cumulative)	0	1,100
Students of middle technical schools (not cumulative)	6,000 [9]	9,000
Students of non-formal training (cumulative)	0	13,000

[6] The baseline is not available because the Chalatenango Center does not currently function as an institute in the Government's MEGATEC Network initiative which was established to expand and strengthen secondary technical education and post-secondary education ("MEGATEC").
[7] The target is to achieve at least the same level of employment as a similar program in El Salvador.
[8] The target is to achieve at least the same level of employment as currently achieved by middle technical schools in El Salvador on average.
[9] The baseline is representative of the schools that will be included in the Project Activity. After the schools have been selected, the baseline will be updated.

HUMAN DEVELOPMENT PROJECT INDICATORS AND DEFINITIONS PROJECT ACTIVITY: COMMUNITY DEVELOPMENT

Goal Indicators:	

HUMAN DEVELOPMENT PROJECT INDICATORS AND DEFINITIONS PROJECT ACTIVITY: COMMUNITY DEVELOPMENT—Continued

Increase in income of water and sanitation beneficiaries.	Percentage increase in income of households receiving water and sanitation investments.
Increase in income of electrification beneficiaries	Percentage increase in income of households who received connections to the electrical grid.
Increase in income of community infrastructure beneficiaries [10].	Increase in income of households located close to community infrastructure.
Objective Indicators:	
Cost of water	Price of water per cubic meter for beneficiaries that buy water before the Project Activity.
Water consumption	Number of cubic meters of water per month paid for by project beneficiaries.
Time collecting water	Hours per week spent collecting water by Project households.
Reduction in the incidence of water-borne diseases.	Number of times a year beneficiaries are sick with intestinal parasitism, diarrhea and infectious gastroenteritis.
Reduction in days of school or work missed as a result of water-borne diseases.	Reduction of the number of days of school or work missed per year as a result of intestinal parasitism, diarrhea or infectious gastroenteritis per beneficiary.
Cost of electricity	Price of electricity per kilowatt-hour for beneficiaries.
Electricity consumption	Number of kilowatt-hours per month consumed on average by rural households connected to the electricity network by the Project Activity.

[10] Community infrastructure refers to the construction of small, strategic projects in the Northern Zone such as feeder roads and associated drainage systems.

HUMAN DEVELOPMENT PROJECT INDICATORS AND DEFINITIONS PROJECT ACTIVITY: COMMUNITY DEVELOPMENT

Time saved accessing education and health centers	Reduction in minutes per working day dedicated to accessing education and health centers by beneficiaries of the Community Infrastructure Sub-Activity.
Outcome Indicators:	
Population with water in the Northern Zone	Number of households with access to water (within the household, outside the household, from a neighbor, from a public faucet, or from a well) divided by total number of households in the Northern Zone.
Population with basic sanitation in the Northern Zone.	Number of households with access to either private sewage drainage systems, latrines or septic tanks divided by total number of households in the Northern Zone.
Population with electricity in the Northern Zone	Number of households with a private electricity connection divided by the total number of households in the Northern Zone.
Population benefiting from community infrastructure [11].	Number of beneficiaries from the Community Infrastructure Sub-Activity.

[11] Community infrastructure refers to the construction of small, strategic projects in the Northern Zone such as feeder roads and associated drainage systems.

HUMAN DEVELOPMENT PROJECT BASELINES AND TARGETS PROJECT ACTIVITY: COMMUNITY DEVELOPMENT

Goal Indicators:		Year 5 [12]
Increase in income of water and sanitation beneficiaries		10%
Increase in income of electrification beneficiaries		15%
Increase in income of community infrastructure beneficiaries		5%
Objective Indicators:	2004	Year 5 [13]
Cost of water (US$ per m_3) [14]	$3.00	$0.43 [15]
Water consumption (m_3)	3.3	18
Time collecting water (hours per week per household)	30	14
Reduction in the incidence of water-borne diseases (times per year per person)	0	1.5
Reduction in days of school or work missed as a result of water-borne diseases (days per year per person).	0	7
Cost of electricity (per kilowatt-hour) [16]	$2.57	$0.20
Electricity consumption (kilowatt-hours per month)	3	50
Time saved accessing education and health centers (minutes per working day per beneficiary).	0	20
Outcome Indicators:	2004	Year 5
Population with water in the Northern Zone [17] (%)	75%	85%
Population with basic sanitation in the Northern Zone [18] (%)	74%	80%

[12] These targets correspond to one year after a household has received the Project intervention.
[13] These targets correspond to one year after a household has received the Project intervention.
[14] The target is in constant 2004 prices. The deflator will be the Consumer Price Index as calculated by DIGESTYC.
[15] The target is based on the cost of distribution only.
[16] The target is in constant 2004 prices. The deflator will be the Consumer Price Index as calculated by DIGESTYC.
[17] The targets for this indicator may be revised after the completion of the Population Census in 2007.
[18] The targets for this indicator may be revised after the completion of the Population Census in 2007.

HUMAN DEVELOPMENT PROJECT BASELINES AND TARGETS PROJECT ACTIVITY: COMMUNITY DEVELOPMENT

Population with electricity in the Northern Zone [19] (%)	72%	97%
Population benefiting from community infrastructure (cumulative people)	0	131,000

[19] The targets for this indicator may be revised after the completion of the Population Census in 2007.

PRODUCTIVE DEVELOPMENT PROJECT INDICATORS AND DEFINITIONS

Goal Indicators:	
Increase in income of Productive Development beneficiaries.	Average percentage increase in annual income of project beneficiaries.
Objective Indicators:	
Economic rate of return (ERR)	The definition and methodology for calculating the ERR will be set forth in the PD Operations Manual and will be consistent with MCC's Guidelines for Economic Analysis.
Employment created	Number of full-time equivalent jobs created as a result of the Project.
Outcome Indicators:	
Investment in productive chains by selected beneficiaries.	Spending of MCC Funding and counterpart contributions on inputs, equipment and infrastructure as laid out in business plans over the Compact Term.

PRODUCTIVE DEVELOPMENT PROJECT BASELINES AND TARGETS

Goal Indicators:		Year 5
Increase in income of Productive Development beneficiaries (%)		15%[20]
Objective Indicators	2006	Year 5
Economic rate of return (%)[21]		14%[22]
Employment created (number of jobs)	0	9,000[23]
Outcome Indicators:	2004	Year 5
Investment in productive chains by selected beneficiaries (Thousands of US$)[24]	0	$80,000[25]

[20] The target is based on the productive sectors that will increase income within the 5 years of the Compact Term. By year 10 the annual increase in income is expected to be 50% based on the productive sectors that will increase income by year 10.
[21] The economic rate of return will be monitored annually.
[22] The target, which is based on the sectors included in the pre-Compact economic analysis, is the same for every year.
[23] The target is based on the sectors that were included in the pre-Compact economic analysis.
[24] The target is in constant 2004 prices. The deflator will be the Consumer Price Index as calculated by DIGESTYC.
[25] The target is based on the sectors that were included in the pre-Compact economic analysis.

CONNECTIVITY PROJECT INDICATORS AND DEFINITIONS

Goal Indicators:	
Increase in income of households near the Northern Transnational Highway.	Increase in income of households within 2 km of the Northern Transnational Highway
Increase in income of households near the Network of Connecting Roads.	Increase in income of households within 2 km of the Network of Connecting Roads
Land prices along the Northern Transnational Highway.	Average price of land 2 km on either side of the Northern Transnational Highway (weighted average of all road sections to be opened or improved)
Land prices along the Network of Connecting Roads.	Average price of land 2 km on either side of the Network of Connecting Roads (average of all road sections to be improved)
Objective Indicators:	
Travel time from Guatemala to Honduras through the Northern Zone.	Number of hours required to travel from Guatemala to Honduras through the Northern Zone
Vehicle operating costs on the Northern Transnational Highway.	Cost per vehicle (pick-up truck) per km of combustibles, lubricants, tires, depreciation, maintenance and repair for travel on the Northern Transnational Highway
Vehicle operating costs on the Network of Connecting Roads.	Cost per vehicle (pick-up truck) per km of combustibles, lubricants, tires, depreciation, maintenance and repair for travel in the Network of Connecting Roads from baseline
Annual average daily traffic on the Northern Transnational Highway.	Average number of vehicles that transit the Northern Transnational Highway daily
Annual average daily traffic on the Network of Connecting Roads.	Average number of vehicles that transit the Network of Connecting Roads daily
Outcome Indicators:	
Average International road Roughness Index (IRI) of the Northern Transnational Highway.	Weighted average IRI of the entire Northern Transnational Highway
Average IRI of the Network of Connecting Roads	Weighted average IRI of the Network of Connecting Roads

CONNECTIVITY PROJECT BASELINES AND TARGETS

Goal Indicators	2006	Year 5
Increase in income of households near the Northern Transnational Highway	.....	6%
Increase in income of households near the Network of Connecting Roads	.....	5%
Land prices along the Northern Transnational Highway (US$ per m^2)[26]	$3.22[27]	$3.40[28]
Land prices along the Network of Connecting Roads (US$ per m^2)[29]	$1.86[30]	$1.95[31]

[26] The target is in constant 2006 prices. The deflator will be the Consumer Price Index as calculated by DIGESTYC.
[27] The baseline is from 2006. The baseline will be confirmed by the feasibility study. The target may be revised if there is a revision to the baseline.
[28] The target is based on a conservative increase in land prices that was included in the pre-Compact economic analysis. The projected increase in price varies by type of road intervention and the target is a weighted average of all road segments.
[29] The target is in constant 2006 prices. The deflator will be the Consumer Price Index as calculated by DIGESTYC.
[30] The baseline is from 2006. The baseline will be confirmed by the feasibility study. The target may be revised if there is a revision to the baseline.

[31] The target is based on a conservative increase in land prices that was included in the pre-Compact economic analysis. The projected increase in price varies by type of road intervention and the target is a weighted average of all road segments.

CONNECTIVITY PROJECT BASELINES AND TARGETS

Objective indicators	2006	Year 5
Travel time from Guatemala to Honduras through the Northern Zone (hours) ..	17 hours	8 hours 30 minutes
Vehicle operating costs on the Northern Transnational Highway (US$ per pick-up truck per km)[32].	$0.38	$0.28
Vehicle operating costs on the Network of Connecting Roads (US$ per pick-up truck per km) [33].	$0.42	$0.24
Annual average daily traffic on the Northern Transnational Highway (vehicles per day).	379	436
Annual average daily traffic on the Network of Connecting Roads (vehicles per day).	204	226
Outcome Indicators	2006	Year 5
Average International road Roughness Index (IRI) of the Northern Transnational Highway (m/km).	10.2	2.7
Average IRI of the Network of Connecting Roads (m/km)	12.1	2.7

[32] The target is in constant 2006 prices. The deflator will be the Consumer Price Index as calculated by DIGESTYC.
[33] The target is in constant 2006 prices. The deflator will be the Consumer Price Index as calculated by DIGESTYC.

(b) Data Collection and Reporting. DIGESTYC shall provide monitoring information to FOMILENIO from the annual Household Survey for Multiple Purposes (*Encuesta de Hogares de Propositos Multiples,* ''EHPM''). MCC Funding will increase the number of households included in the EHPM sample in the Northern Zone; provided, however, that the Government shall ensure that DIGESTYC continues to include the necessary number of households in the EHPM sample for the Northern Zone as required in the M&E Plan. The M&E Plan shall establish guidelines for additional data collection and a reporting framework, including a schedule of Program reporting and responsible parties.

The Management shall conduct regular assessments of program performance to inform FOMILENIO and MCC of progress under the Program and to alert these parties to any problems. These assessments will report the actual results compared to the Targets on the Indicators referenced in the Monitoring Component, explain deviations between these actual results and Targets, and in general, serve as a management tool for implementation of the Program. With respect to any data or reports received by FOMILENIO, FOMILENIO shall promptly deliver such reports to MCC along with any other related documents, as specified in the M&E Plan or as may be requested from time to time by MCC.

(c) Data Quality Reviews. From time to time, as determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan shall be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection. The data quality reviewer shall enter into an Auditor/Reviewer Agreement with FOMILENIO in accordance with Annex I.

3. Evaluation Component

The Program shall be evaluated on the extent to which the interventions contribute to the Compact Goal. The Evaluation Component of the M&E Plan shall contain a methodology, process and timeline for collecting and analyzing data in order to assess planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability. The evaluations should use state-of-the-art methods for addressing selection bias. The Government shall implement, or cause to be implemented, surveys to collect longitudinal data on both Beneficiary and non-Beneficiary households. The Evaluation Component shall contain two types of reports, Final Evaluations and Ad Hoc Evaluations, and shall be finalized before any MCC Disbursement or Re-Disbursement for specific Program activities or Project Activities.

(a) Final Evaluation. FOMILENIO, in connection with MCC's request to the Government pursuant to Section 3(h) of Annex I, shall engage an independent evaluator to conduct an evaluation at the expiration or termination of the Compact Term (''Final Evaluation''). The Final Evaluation must at a minimum (i) evaluate the efficiency and effectiveness of the Program; (ii) estimate, quantitatively and in a statistically valid way, the causal relationship between the Compact Goal (to the extent possible), the Objectives and Outcomes; (iii) determine if, and analyze the reasons why, the Compact Goal, Objectives and Outcomes were or were not achieved; (iv) identify positive and negative unintended results of the Program; (v) provide lessons learned that may be applied to similar projects; (vi) assess the likelihood that results will be sustained over time; and (vii) any other guidance and direction that will be provided in the M&E Plan. To the extent engaged by FOMILENIO, such independent evaluator shall enter into an Auditor/Reviewer Agreement with FOMILENIO in accordance with Annex I.

(b) Ad Hoc Evaluations. Either MCC or FOMILENIO may request ad hoc or interim evaluations or special studies of Projects, Project Activities, or the Program as a whole prior to the expiration of the Compact Term (each, an ''Ad Hoc Evaluation''). If FOMILENIO engages an evaluator for an Ad Hoc Evaluation, the evaluator will be an externally contracted independent source selected by FOMILENIO, subject to the prior written approval of MCC, following a tender in accordance with the Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter or Supplemental Agreement. If FOMILENIO requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project Activity or seeking funding from other donors, no MCC Funding or FOMILENIO resources may be applied to such evaluation or

special study without MCC's prior written approval.

4. Other Components of the M&E Plan

In addition to the Monitoring Component and the Evaluation Component, the M&E Plan shall include the following components for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumptions and risks external to the Program that underlie the accomplishment of the Compact Goal, Objectives, and Outcomes; provided, however, such assumptions and risks shall not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

5. Implementation of the M&E Plan

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, shall be in accordance with the Program Annex, this M&E Annex, the Governing Documents, and any relevant Supplemental Agreement.

(b) Advisory Council. The completed portions of the M&E Plan will be presented to the Advisory Council at the Advisory Council's initial meetings, and any amendments or modifications thereto or any additional components of the M&E Plan will be presented to the Advisory Council at appropriate subsequent meetings of the Advisory Council. The Advisory Council will have opportunity to present its suggestions to the M&E Plan, which the Board shall take into consideration in its review of any amendments to the M&E Plan during the Compact Term.

(c) MCC Disbursement and Re-Disbursement for a Project Activity. As a condition to each MCC Disbursement or Re-Disbursement there shall be satisfactory progress on the M&E Plan for the relevant Project or Project Activity, and substantial compliance with the M&E Plan, including any reporting requirements.

(d) Modifications. Notwithstanding anything to the contrary in this Compact, including the requirements of this M&E Annex, MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee) may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending the Compact; *provided, however,* that any such modification or amendment of the M&E Plan has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties.

[FR Doc. E6–21222 Filed 12–19–06; 8:45 am]

BILLING CODE 9211–03–P

Federal Register

Wednesday,
December 20, 2006

Part III

Department of Health and Human Services

48 CFR Parts 301, 302 et al.
Acquisition Regulations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 301, 302, 303, 304, 305, 306, 307, 309, 311, 312, 314, 315, 316, 319, 323, 324, 325, 330, 332, 333, 334, 335, 339, 342, 352, and 370

Acquisition Regulations

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulations (HHSAR) to make administrative and editorial changes to reflect organizational title changes resulting from Office of the Secretary (OS) and Operating Division (OPDIV) reorganizations and to update or remove outdated text and references. The intent of the final rule is to bring the HHSAR up to date and to make the HHSAR consistent with the latest amendments to the Federal Acquisition Regulations (FAR).

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

FOR FURTHER INFORMATION CONTACT: Katherine Hughes, Office of Acquisition Management and Policy, telephone (202) 690–7079, e-mail: *Katherine.Hughes@hhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Department is not making significant amendments to the existing HHSAR. The amendments to the HHSAR concern internal procedural matters which are administrative in nature, and will not have a major effect on the general public or on contractors or offerors supporting the Department. The majority of the amendments address the following:

- HHS organizational title changes resulting from agency reorganizations.
- Eliminating procedural guidance no longer deemed necessary.
- Changing contracting review and approval authorities to situate them at levels more appropriate to simplification, streamlining, and empowerment.
- Updating the HHSAR to bring it in line with the latest amendments made to the Federal Acquisition Regulation (FAR).
- Clarifying authorities for selecting and terminating Contracting Officers.
- Establishing minimum training requirements for certain positions.
- Specifically referencing regulations of other Federal agencies.
- Updating the text of clauses required to be inserted in solicitations and contracts.

B. Comments on the Notice of Proposed Rulemaking

The Department published a Notice of Proposed Rulemaking (NPRM) on May 26, 2006 (70 FR 30520). The comment period closed on July 25, 2006. The Department received one comment from the public regarding section 352.270–8. The commenter stated that the Office for Human Research Protections (OHRP), which was cited as an office within the National Institutes of Health (NIH), is now an office in the Office of Public Health and Science (OPHS). Section 352.270–8 has been corrected in this final rule to refer to the new office location.

In addition, the Department's internal review of the NPRM has resulted in a number of editorial changes and corrections, none of which are substantive.

C. Regulatory Flexibility Act

The Department of Health and Human Service certifies this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements. Therefore, no regulatory flexibility statement has been prepared. Since this rule conveys existing acquisition policies or procedures and does not promulgate any new policies or procedures that would impact the public, it has been determined that this rule will not have a significant economic effect on a substantial number of small entities, and, thus, a regulatory flexibility analysis was not performed.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the HHSAR do not impose any record keeping or information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Existing approvals cited in 48 CFR 301.106 remain in effect. The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

E. Administrative Procedure Act Exception

This final rule imposes no new burdens on the public and merely updates, corrects, or clarifies existing regulations. Therefore, good cause exists under 5 U.S.C. 553(d) to dispense with the 30-day delay in the effective date requirement, and the Department of Health and Human Services is making the rule effective upon publication in the **Federal Register**.

List of Subjects in 48 CFR Chapter 3

Government procurement.

Dated: September 21, 2006.

Joe W. Ellis,

Assistant Secretary for Administration and Management.

Editorial Note: This document was received in the Office of the Federal Register on December 13, 2006.

■ Under the authority of 5 U.S.C. 301; 40 U.S.C. 486(c), the Department of Health and Human Services amends 48 CFR Chapter 3 as set forth below.

CHAPTER 3—HEALTH AND HUMAN SERVICES

■ 1. The authority citation for 48 CFR chapter 3, parts 301 through 370 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 301—HHS ACQUISITION REGULATION SYSTEM

■ 2. Revise paragraph (b) of section 301.101 to read as follows:

301.101 Purpose.

* * * * *

(b) The HHSAR implements FAR policies and procedures and provides additional policies and procedures that supplement the FAR to satisfy the needs of HHS.

* * * * *

■ 3. Revise section 301.270 to read as follows:

301.270 Executive Committee for Acquisition.

(a) The Deputy Assistant Secretary for Acquisition Management and Policy has established the Executive Committee for Acquisition (ECA) to assist and facilitate the planning and development of departmental acquisition policies and procedures and to assist in responding to other agencies and organizations concerning policies and procedures impacting the Federal acquisition process.

(b) The ECA consists of members and alternates from the Division of Acquisition Policy (DAP), Agency for Healthcare Research and Quality, Centers for Medicare & Medicaid Services, Program Support Center, Centers for Disease Control and Prevention, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, and Substance Abuse and Mental Health Services Administration. The ECA is

chaired by the Director, Division of Acquisition Policy (DAP). All meetings will be held at the call of the Chair, and all activities will be carried out under the direction of the Chair.

(c) The purposes of the ECA are to:

(1) Advise and assist the Chair on major acquisition policy matters;

(2) Review and evaluate the overall effectiveness of existing policies and procedures and the impact of new acquisition policies, procedures, and regulations on current acquisition policies and procedures.

(d) The Chair will periodically issue a list of current members and alternates, including each person's name, title, organization, address, telephone number, and e-mail address. ECA members are responsible for apprising the Chair of any changes to the list.

■ 4. Revise section 301.403 to read as follows:

301.403 Individual deviations.

Requests for individual deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded to the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP).

■ 5. Revise section 301.404 to read as follows:

301.404 Class deviations.

Requests for class deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded to the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP).

■ 6. Amend section 301.470 by revising paragraph (a) to read as follows:

301.470 Procedure.

(a) Deviation requests shall be prepared in memorandum form and forwarded through the Head of the Contracting Activity (HCA) to the Director, Division of Acquisition Policy. A deviation may be requested verbally in an exigency situation; however, the request must be confirmed in writing as soon as possible.

* * * * *

■ 7. Amend section 301.602–3 by revising paragraphs (b)(3), (e)(1), and (e)(2) to read as follows:

301.602–3 Ratification of unauthorized commitments.

* * * * *

(b) * * *

(3) Ratification authority for actions up to $100,000 may be redelegated by the HCA to the chief of the contracting office (CCO). No other redelegations are authorized.

* * * * *

(e) *Procedures.* (1) The individual who made the unauthorized contractual commitment shall furnish the reviewing Contracting Officer all records and documents concerning the commitment and a complete written statement of facts, including, a description of the requirement, the estimated or agreed upon price, the funds citation, an explanation of why the contracting office was not used and why the proposed contractor was selected, a list of other sources considered, and a statement as to whether the contractor has commenced work.

(2) The Contracting Officer will review the submitted material and prepare it for ratification if it is determined that the commitment is ratifiable. The Contracting Officer shall forward the ratification document and the submitted material to the HCA or CCO with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the HCA or CCO will coordinate the request for ratification with the Office of General Counsel, Business and Administrative Law Division.

* * * * *

■ 8. Revise section 301.603 and 301.603–1 to read as follows:

301.603 Selection, appointment, and termination of appointment of Contracting Officers/Contract Specialists.

301.603–1 General.

(a) The appointment, selection, and termination of appointment of Contracting Officers/Contract Specialists shall be made by the HCA. This authority is not delegable. The procedures for the selection and appointment of Contracting Officers/Contract Specialists shall apply to anyone seeking a Contracting Officer warrant. OPDIV procedures shall be followed in the appointment and termination of Contracting Officers/Contract Specialists in offices that have Contracting Officers/Contract Specialists with dual signature warrants.

(b) Standard Form (SF) 1402, ''Certificate of Appointment,'' shall be used to appoint personnel in the 1102 series as Contracting Officers. It shall also be used for personnel in any other series who will obligate the Government to the expenditure of funds in excess of the micro-purchase threshold. The SF 1402 shall indicate the Contracting Officer's warrant level and threshold and any other limitations. The HCA may determine an alternate appointment document for appointments at or below the micropurchase threshold level. Contracting Officer warrants will be issued to civil service personnel only. A delegation of procurement authority shall be set forth in a memorandum that describes the spending limits and authority. Changes to appointments shall be made by issuing a new appointment document. Each appointment document shall be prepared and maintained in accordance with FAR 1.603–1 and shall state the limits of the individual's authority.

(c) An individual must be certified at the appropriate level as a prerequisite to being appointed as a Contracting Officer with authority to obligate funds in excess of the micro-purchase threshold (see 301.603–72). The HCA will determine and require training for individuals appointed as Contracting Officers/Contract Specialists at dollar levels below the micropurchase threshold. Individuals selected for Contracting Officer warrant authority must meet the education, training, and experience requirements that are established for the warrant level. An individual shall be appointed as a Contracting Officer only in instances where a valid organizational need is demonstrated. Factors to be considered in assessing the need for an appointment of a Contracting Officer include volume of actions, complexity of work, and structure of the organization.

(d) Contracting Officers (GS–1102's) shall not sign contracts or modifications to contracts which will result in the total amount of the contract exceeding their delegated warrant authority (as specified on the SF–1402). This includes Indefinite Delivery Indefinite Quantity (IDIQ) contracts. However, orders placed against an IDIQ may be issued by Contracting Officers up to their delegated authority provided that each order is separate and distinct.

(e) Employees delegated warrant authority are the only individuals legally authorized to bind the Government by executing contracts or signing determinations and findings required by the FAR. The amount specified on the warrant shall cover the estimated maximum contract amount, including all option periods. For example, an employee with a $500,000 Contracting Officer Certificate of Appointment may not award a contract for a base year of $300,000 if the contract includes a one-year option for an additional $300,000. In this case, the total contract amount, including options, exceeds the amount stipulated in the warrant. If a warrant is limited to $500,000 (for example), the holder may not sign a contract for more than that amount, even if the additional amount

is subject to the availability of funds. Contracting Officers with higher warrant levels may sign the action when modifications to orders and contracts make the total amount of the contract exceed the Contracting Officer's warrant limitation.

■ 9. Revise section 301.603–2 to read as follows:

301.603–2 Selection of Contracting Officers.

When it has been determined that the appointment is in the best interest of the OPDIV and/or Department and there is a demonstrated need for the procurement authority requested, nominations for appointment of Contracting Officers shall be submitted to the HCA through appropriate organizational channels for review. The HCA is responsible for appointing Contracting Officers in accordance with FAR 1.603. This authority is not delegable. The HCA will determine the documentation required, consistent with FAR 1.603–2, when the resulting appointment and authority will not exceed the micropurchase threshold.

■ 10. Revise section 301.603–3 to read as follows:

301.603–3 Appointment of Contracting Officers.

(a) Appointing officials must ensure that a warrant candidate meets the experience and education/training requirements listed in 301.603–72.

(b) If it is essential to appoint an individual who does not fully meet the certification requirements for the Contracting Officer authority sought, an interim appointment may be granted by the HCA. HCAs are responsible for ensuring that training requirements are met within the specified time frame. Interim appointments may not exceed one year in total, and shall not be granted unless the individual can meet the certification requirements within one year from the date of appointment. The HCA may extend an interim appointment by granting additional time to complete the requirements of a permanent appointment. If the certification requirements are not completed by the extended date, the appointment will automatically terminate.

■ 11. Revise section 301.603–4 to read as follows:

301.603–4 Termination or revocation of a Contracting Officer's appointment.

Termination or revocation of Contracting Officer appointments shall be accomplished in accordance with FAR 1.603–4.

■ 12. Revise section 301.603–70 to read as follows:

301.603–70 Delegation of Contracting Officer responsibilities.

(a) Contracting Officer responsibilities which do not involve the obligation or deobligation of funds or result in establishing or modifying contractual provisions may be delegated by the Contracting Officer by means of a written memorandum that clearly delineates the delegation and its limits.

(b) Contracting Officers may designate individuals as ordering officials to make purchases or place orders under blanket purchase agreements, indefinite delivery contracts, or other preestablished mechanisms. Ordering officials, including those under the National Institutes of Health's (NIH) Delegated Acquisition Program (DELPRO), are not Contracting Officers.

■ 13. Add sections 301.603–71 through 301.603–76 to subpart 301.6 to read as follows:

Subpart 301.6—Career Development, Contracting Authority, and Responsibilities

* * * * *

301.603–71 Waivers to warrant standards.
301.603–72 Training and certification requirements for Contracting Officers/Contract Specialists.
301.603–73 Earned value training requirement for Contracting Officers/Contract Specialists who administer an IT contract.
301.603–74 Training policy exception.
301.603–75 Training requirement for purchase cardholders, Approving Officials (AOs), and Agency/Organization Program Coordinators (A/OPCs).
301.603–76 Requirement for certification retention and maintaining currency of acquisition knowledge and skills for Contracting Officers/Contract Specialists and purchasing agents.

Subpart 301.6—Career Development, Contracting Authority, and Responsibilities

301.603–71 Waivers to warrant standards.

There may be an unusual circumstance that requires delegation of a warrant to an employee who does not meet the warrant standards in of the HHS Contracting Officer Warrant Program. Any requests for waivers requesting deviations from the requirements and policies of the HHS Contracting Officer Warrant Program shall be sent in writing to the SPE for approval. The SPE will either approve or disapprove in writing the request for a waiver to the warrant standards. The SPE may grant waivers on a case-by-case basis in unique situations only.

301.603–72 Training and certification requirements for Contracting Officers/Contract Specialists.

(a) Federal Acquisition Certification in Contracting (FAC–C) certification is *not mandatory* for all GS–1102s; however, members of the workforce issued new Contracting Officer (CO) warrants on or after January 1, 2007, regardless of GS series, *must* be certified at an appropriate level to support their warrant obligations, pursuant to agency policy. *New* CO warrants are defined in OFPP Policy Letter 05–01 as warrants issued to employees for the *first time* at a department or agency. FAC–C certification does not apply to:

(1) Senior level officials responsible for delegating procurement authority;

(2) Non-1102s whose warrants are generally used to procure emergency goods and services; or

(3) Non-1102s whose warrants are so limited as to be outside the scope of this program, as determined by the Chief Acquisition Officer (CAO).

(b) HHS requires a senior level FAC–C certification for any employee issued an unlimited Contracting Officer's warrant on or after January 1, 2007.

(c) Achievement of the FAC–C is based on three requirements: education, training, and experience, and the requirements are cumulative, (i.e., a person must meet the requirements of each previous certification level).

(d) FAC–C training requirements are as follows:

(1) FAC–C Level I:

(i) CON 100 Shaping Smart Business Arrangements.

(ii) CON 110 Mission Support Planning.

(iii) CON 111 Mission Strategy Execution.

(iv) CON 112 Mission Performance Assessment.

(v) CON 120 Mission Focused Contracting.

(vi) 1 Elective.

(2) FAC–C Level II:

(i) CON 202 Intermediate Contracting.

(ii) CON 204 Intermediate Contract Pricing.

(iii) CON 210 Government Contract Law.

(iv) 2 Electives.

(3) FAC–C Level III:

(i) CON 353 Advanced Business Solutions for Mission Support.

(ii) 2 Electives.

(e) Those conducting simplified acquisitions from $2,500 to $100,000 will need to be issued an HHS Simplified Acquisition Certificate. Required training is as follows:

(1) HHS Simplified Acquisition Certificate A:

(ii) Basic Simplified Acquisition Procedures/DAU's CON 237.

(iii) Advanced Simplified Acquisition Procedures or Appropriations Law.

(2) HHS Simplified Acquisition Certificate B:

(i) Basic Simplified Acquisition Procedures/DAU's CON 237.

(ii) Advanced Simplified Acquisition Procedures or Appropriations Law.

(iii) CON 100 (Shaping Smart Business Arrangements).

(iv) CON 110 (Mission Support Planning).

(f) For additional information, see *http://www.knownet.hhs.gov/acquisition/careerhandbookver.1.0.doc.*

301.603–73 Earned value training requirement for Contracting Officers/Contract Specialists who administer an IT contract.

All GS–1102s who administer an IT contract, regardless of dollar threshold, are required to successfully complete the Department's (offered through HHS University) one-day course entitled ''Early Warning Project Management Systems Workshop,'' or an equivalent Earned Value training course. Determination of course equivalency shall be made jointly by the Office of Acquisition Management and Policy/ASAM and the HHS Office of the Chief Information Officer.

301.603–74 Training policy exception.

In the event there is an urgent requirement for a Contracting Officer/Contract Specialist to award or administer an IT contract, and the Earned Value training requirement has not been met, the HCA (not delegable) may waive the training requirement and authorize the individual to perform the job duties, provided that the individual attends the next scheduled ''Early Warning Project Management System Workshop'' course, or an equivalent Earned Value course.

301.603–75 Training requirement for purchase cardholders, Approving Officials (AOs), and Agency/Organization Program Coordinators (A/OPCs).

Training requirements for purchase cardholders, AOs, and A/OPCs are listed in the following table:

Authority [a]	Program participant	Required training [b]
Up to $2,500	Prospective/newly appointed purchase cardholders and Approving Officials.	Basic purchase card course (HHS University 1-day course) or an equivalent course that has been approved by the HHS Acquisition Training Coordinator prior to appointment. Training will include green-purchasing and Section 508 requirements.
	Purchase card holders and Approving Officials.	Refresher purchase card training, including green-purchasing training and Section 508 training, every 2 years.
$2,501 to $25,000	Prospective/newly appointed purchase cardholders and Approving Officials.	• Basic Purchase Card course. • Basic Simplified Acquisition Procedures/DAU's CON 237. • Advanced Simplified Acquisition Procedures or Appropriations Law.
	Purchase card holders and Approving Officials.	Refresher purchase card training, including green-purchasing training and Section 508 training, every 2 years.
$25,001 to $100,000	Prospective/newly appointed purchase cardholders and Approving Officials.	• Basic Purchase Card course. • Basic Simplified Acquisition Procedures/DAU's CON 237. • Advanced Simplified Acquisition Procedures or Appropriations Law. • CON 100 (Shaping Smart Business Arrangements). • CON 110 (Mission Support Planning).
	Purchase cardholders and Approving Officials.	Refresher purchase card training, including green-purchasing training and Section 508 training, every 2 years.
Not applicable	Prospective/newly appointed Agency/Organization Program Coordinators.	Basic Purchase Card course, Basic Simplified Acquisition Procedures or DAU's CON 237, Advanced Simplified Acquisition Procedures or Appropriations Law, CON 100 (Shaping Smart Business Arrangements), and CON 110 (Mission Support Planning).
	Agency/Organization Program Coordinators.	Refresher purchase card training, including green-purchasing training and Section 508 training, every 2 years (attendance at GSA's annual training conference satisfies refresher training).

[a] Cardholders and Approving Officials with authorized increases in DPA have up to 6 months to complete the training requirements for the new DPA.

[b] CON 237, CON 100, and CON 110 are available at the DAU Web site at *http://www.dau.mil/registrar/enroll.asp*. CON 100 is also offered through HHS University (see Web site at: *http://learning.hhs.gov*).

301.603–76 Requirement for certification retention and maintaining currency of acquisition knowledge and skills for Contracting Officers/Contract Specialists and purchasing agents.

To maintain a FAC–C, GS–1102s, including all warranted Contracting Officers regardless of series, shall earn 80 continuous learning points (CLPs) every two years beginning January 1, 2008. For GS–1105s and GS–1106s, a minimum of forty (40) hours (or continuous learning points) is required every two years after all mandatory training requirements have been met. Certification will expire if the CLPs are not earned every two years, and may result in a loss of warrant authority.

PART 302—DEFINITIONS OF WORDS AND TERMS

■ 14. Revise section 302.101 to read as follows:

302.101 Definitions.

Agency head or *head of the Agency*, unless otherwise specified, means the head of the Operating Division (OPDIV) for Agency for Healthcare Research and Quality (AHRQ), Centers for Disease Control and Prevention (CDC), Centers for Medicare & Medicaid Services (CMS), Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), Indian Health Service (IHS), National Institutes of Health (NIH), Substance Abuse and Mental Health Services (SAMHSA), and the Deputy Secretary for the Office of the Secretary (OS).

Chief of the Contracting Office (CCO) is typically a mid-level management official, usually an office director, division director, or branch chief, who manages and monitors the daily contract operations of an OPDIV or major component of an OPDIV. The CCO is subordinate to the Head of Contracting

Activity (HCA), except where the HCA and CCO are the same individual.

Head of the contracting activity (HCA)—

(1) Occupies designated organization positions as follows:

ASAM–OS—Deputy Assistant Secretary for Acquisition Management and Policy

AHRQ—Director, Division of Contracts Management

CMS—Director, Office of Acquisition and Grants Management

PSC—Director, Division of Acquisition Management

CDC—Director, Procurement and Grants Office

FDA—Director, Office of Acquisitions & Grant Services

HRSA—Director, Division of Procurement Management

IHS—Director, Division of Acquisition Policy

NIH—Director, Office of Acquisition Management and Policy

SAMHSA—Director, Division of Contracts Management

(2) Each HCA is responsible for conducting an effective and efficient acquisition program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted and evaluated by qualified personnel, preferably assigned to positions other than in the contracting office being reviewed, to determine the extent of adherence to prescribed policies and regulations, and to detect a need for guidance and/or training.

(3) The heads of contracting activities may redelegate their HCA authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the Federal Acquisition Regulation, by the HHS Acquisition Regulation, or by other regulations. However, HCA and other contracting approvals and authorities shall not be redelegated below the levels specified in the HHS Acquisition Regulation or, in the absence of coverage in the HHS Acquisition Regulation, the Federal Acquisition Regulation. To ensure proper control of redelegated acquisition authorities, HCAs shall maintain a file containing successive delegations of HCA authority through and including the Contracting Officer level. Personnel delegated responsibility for acquisition functions must possess a level of experience, training, and ability commensurate with the complexity and magnitude of the acquisition actions involved.

Project Officer is a Federal employee who monitors contractor performance and provides technical guidance to the Contract Specialist/Contracting Officer. The Project Officer serves as the Contract Specialist/Contracting Officer's authorized representative to monitor specific aspects of the contract, thereby ensuring that the contractor's performance meets the standards set forth in the contract, the technical requirements under the contract are met by the delivery date(s) and/or within the period of performance, and performance is accomplished within the price or estimated cost stated in the contract. A Project Officer is required to comply with HHS Project Management Certification Program training requirements. The term ''Project Officer'' is synonymous with Contracting Officer's Representative (COR) and Contracting Officer's Technical Representative (COTR).

■ 15. Revise section 302.201 to read as follows:

302.201 Contract clause.

The FAR clause, Definitions, at 52.202–1 shall be used as prescribed in FAR 2.201, except as follows:

(a) In accordance with 52.202–1(a)(1), paragraph (a) at 352.202–1 shall be used in place of paragraph (a) of the FAR clause.

(b) In accordance with 52.202–1(a)(1), paragraph (h), or its alternate, at 352.202–1 shall be added to the end of the FAR clause. Use paragraph (h) when a fixed-priced contract is anticipated; use the alternate to paragraph (h) when a cost-reimbursement contract is anticipated. This is an authorized deviation.

PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 16. Revise section 303.101–3 to read as follows:

303.101–3 Agency regulations.

(a)(3) The Department of Health and Human Services' Standards of Conduct are prescribed in 45 CFR part 73.

■ 17. Revise paragraph (a)(2)(i) of section 303.104–7 to read as follows:

303.104–7 Violations or possible violations of the Procurement Integrity Act.

(a) * * *

(2) * * *

(i) Refer the matter immediately to the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP), Assistant Secretary for Administration and Management, Office of the Secretary, for review, which may consult with the Office of General Counsel (OGC) and the Office of Inspector General (OIG), as appropriate; and

* * * * *

■ 18. Revise section 303.303 to read as follows:

303.303 Reporting suspected antitrust violations.

(h) A copy of the agency report of suspected antitrust violations submitted to the Attorney General by the HCA shall also be submitted to the Director, Office of Acquisition Management and Policy.

■ 19. Revise section 303.405 to read as follows:

303.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Reports shall be made promptly to the Contracting Officer.

(b)(4) Suspected fraudulent or criminal matters to be reported to the Department of Justice shall be prepared in letter format and forwarded through acquisition channels to the head of the contracting activity for signature. The letter must contain all pertinent facts and background information considered by the Contracting Officer and chief of the contracting office that led to the decision that fraudulent or criminal matters may be present. A copy of the signed letter shall be sent to the Director, Office of Acquisition Management and Policy.

■ 20. Revise section 303.704 to read as follows:

303.704 Policy.

(a) For purposes of implementing FAR subpart 3.7, the authorities granted to the ''agency head or designee'' shall be exercised by the HCA (not delegable).

PART 304—ADMINISTRATIVE MATTERS

■ 21. Revise section 304.602 to read as follows:

304.602 Federal Procurement Data System—Next Generation (FPDS–NG).

The Departmental Contracts Information System (DCIS) represents the Department's implementation of the FPDS-NG. All departmental contracting activities are required to use the DCIS and follow the procedures stated in the Enhanced Departmental Contracts Information System Manual, available at *http://dcis.hhs.gov*, and amendments to the manual. The HCA (not delegable) shall ensure that all required contract information is collected, submitted, and received into the DCIS on or before the 15th of each month for all contracts and

contract modifications awarded in the previous month.

■ 22. Amend 304.804–70 by revising paragraphs (a) and (b)(1) to read as follows:

304.804–70 Contract closeout audits.

(a) Contracting Officers shall rely, to the maximum extent possible, on single audits to close physically completed cost-reimbursement contracts with colleges and universities, hospitals, non-profit firms, and State and local governments. In addition, where appropriate, a sample of these contractors may be selected for audit, in accordance with paragraph (b) of this section.

(b) * * *

(1) The Office of the Inspector General (OIG) and ASAM's Deputy Assistant Secretary for Acquisition Management and Policy in conjunction with the OPDIV's cost advisory/audit focal point, determine which contracts or contractors will be audited, which audit agency will perform the audit, and the type and scope of closeout audit to be performed. These decisions shall be based upon the needs of the customer, risk analysis, return on investment, and the availability of audit resources. When an audit is warranted prior to closing a contract, the Contracting Officer shall submit the audit request to the OIG's Office of Audit, via the OPDIV's cost advisory/audit focal point.

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■ 23. Revise paragraphs (b)(3), (b)(6), and (e) of section 304.7001 to read as follows:

304.7001 Numbering acquisitions.

* * * * *

(b) * * *

(3) The three digit numeric identification code assigned by the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP) to the contracting office within the servicing agency;

* * * * *

(6) A one digit code describing the type of contract action:

A Commercial Item Acquisition
C New Definitive Contract
P Purchase Using Simplified Acquisition
I Indefinite Delivery Contract (IDIQ)
O Basic Ordering Agreement (BOA)
B Blanket Purchase Agreement (BPA)
F Facilities Contract
U Contracts placed with or through other Government departments, GSA contracts, or against mandatory source contracts such as the National Industries for the Blind (NIB), the National Industries for the Severely Handicapped (NISH), and the Federal Prison Industries (UNICOR)
L Lease Agreement
W Government-wide Acquisition Contract (GWAC)
E Letter Contract
G Federal Supply Schedule
M Micropurchase

For example, the first contract for NIH, National Cancer Institute, for fiscal year 2005 may be numbered HHSN261200500001C.

* * * * *

(e) *Assignment of identification codes.* Each contracting office of the Department shall be assigned a three digit identification code by the ASAM/OAMP. Requests for the assignment of codes for newly established contracting offices shall be submitted by a headquarters official from the new contracting office to the OAMP. A listing of the contracting office identification codes currently in use is contained in the Enhanced Departmental Contracts Information System Manual, available at *http://dcis.hhs.gov.*

PART 305—PUBLICIZING CONTRACT ACTIONS

■ 24. Revise section 305.202 to read as follows:

305.202 Exceptions.

(b) When a contracting office believes that it has a situation where advance notice is not appropriate or reasonable, it shall prepare a memorandum citing all pertinent facts and details and send it, through normal acquisition channels, to the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP) requesting relief from synopsizing. The DASAMP shall review the request and decide whether an exception to synopsizing is appropriate or reasonable. If it is, the DASAMP shall take the necessary coordinating actions required by FAR 5.202(b). Whatever the decision is on the request, the DSAMP shall promptly notify the contracting office when a determination has been made.

■ 25. Revise section 305.303 to read as follows:

305.303 Announcement of contract awards.

(a) *Public announcement.* Awards over $3.5 million, not otherwise exempt under FAR 5.303, shall be reported by the Contracting Officer to the Office of the Assistant Secretary for Legislation (Congressional Liaison), Room 406G, Hubert H. Humphrey Building. Notification shall be accomplished by providing a copy of the contract or award document face page to the referenced office prior to the day of award, or in sufficient time to allow for an announcement to be made by 5 p.m. Washington, DC time on the day of award. Notification may also be accomplished by e-mailing a copy of the contract or award document face page to *grantfax@hhs.gov,* or faxing to (202) 205–2420.

■ 26. Revise section 305.502 to read as follows:

305.502 Authority.

The Contracting Officer may advertise or place notices in newspapers and periodicals to announce that proposals are being sought.

PART 306—COMPETITION REQUIREMENTS

■ 27. Revise section 306.302–1 to read as follows:

306.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(2)(iv) Follow-on contracts for the continuation of major research and development studies on long-term social and health programs, major research studies, or clinical trials may be deemed to be available only from the original source when it is likely that award to any other source would result in unacceptable delays in fulfilling the Department's or OPDIV's requirements.

(b) *Application.* (5) When the head of the program office has determined that only specified makes and models of technical equipment or parts must be obtained to meet the activity's program responsibility to test and evaluate certain kinds and types of products, and only one source is available. (This criterion is limited to testing and evaluation purposes only and may not be used for initial outfitting or repetitive acquisitions. Project officers should support the use of this criterion with citations from their agency's legislation and the technical rationale for the item of equipment required.)

■ 28. Revise section 306.303–1 to read as follows:

306.303–1 Requirements.

(a)(1) The Program Office must provide a written justification whenever it requests that certain goods or services be obtained without full and open competition. The justification must explain why full and open competition is not feasible and must be submitted with the requisition or request for contract.

(i) Justifications in excess of the simplified acquisition threshold shall be in the form of a separate, self-contained

document, prepared in accordance with FAR 6.303 and 306.303, and called a ''JOFOC'' (Justification for Other Than Full and Open Competition). Justifications at or below the simplified acquisition threshold may be in the form of a paragraph or paragraphs contained in the requisition or request for contract.

(ii) Justifications, whether over or under the simplified acquisition threshold, shall fully describe what is to be acquired, offer reasons which go beyond inconvenience, and explain why it is not feasible to obtain competition. The justifications shall be supported by verifiable facts rather than mere opinions. Documentation in the justification should be sufficient to permit an individual with technical competence in the area to follow the rationale.

(iii) Sole source justifications using the Federal Supply Schedule shall include the content listed in FAR 6.303–2.

(b) Preliminary arrangements or agreements with the proposed contractor shall have no effect on the rationale used to support an acquisition for other than full and open competition.

■ 29. Revise section 306.303–2 to read as follows:

306.303–2 Content.

(a)(1) Each justification shall include the name of the program office; the name, address, and phone number of the Project Officer; and project identification, such as the authorizing program legislation, to include citations or other internal program identification data such as title, contract number, etc.

(2) The description may be in the form of a statement of work, purchase description, or specification. A statement is to be included to explain whether the acquisition is an entity in itself, whether it is one in a series, or part of a related group of acquisitions.

(c) JOFOCs shall be signed by the Project Officer, the Project Officer's immediate supervisor, the Contracting Officer, and the approving official (if the approving official is not the Contracting Officer).

■ 30. Revise section 306.304 to read as follows:

306.304 Approval of the justification.

(a)(2) The competition advocates are listed in 306.501. This authority is not delegable.

(3) The competition advocate shall exercise this approval authority, except where the individual designated as the competition advocate does not meet the requirements of FAR 6.304 (a)(3)(ii). This authority is not delegable.

(4) The senior procurement executive of the Department is the Deputy Assistant Secretary for Acquisition Management and Policy. This designation has been made pursuant to the OFPP Act (41 U.S.C. 414(c)(2)(B).

(c) A class justification shall be processed the same as an individual justification.

■ 31. Revise section 306.501 to read as follows:

306.501 Requirement.

The Department's competition advocate is the Director, Strategic Acquisition Service, Program Support Center (PSC). The competition advocates for each of the Department's contracting activities are as follows:

AHRQ—Director, Office of Performance Accountability, Resources and Technology
CDC—Chief Information Officer
CMS—Chief Operating Officer
FDA—Chief, Office of Shared Services
HRSA—Associate Administrator, Office of Administration and Financial Management
IHS—Director, Office of Management Services
NIH—Senior Scientific Advisor for Extramural Research, Office of Extramural Research (R&D) and Senior Advisor to the Director (Other than R&D)
PSC—Director, Strategic Acquisition Service
SAMHSA—Executive Officer

PART 307—ACQUISITION PLANNING

■ 32. Revise section 307.104 to read as follows:

307.104 General procedures.

(a) Each contracting activity shall prepare an Annual Acquisition Plan (AAP). The AAP is a macro plan, containing a list of anticipated contract actions over the simplified acquisition threshold and their associated funding, as well as the aggregate planned dollars for simplified acquisitions by quarter, developed for each fiscal year. The AAP shall conform to reasonable budget expectations and shall be reviewed at least quarterly and modified as appropriate. The HCA or the CCO shall obtain this information from the program planning/budget office of the contracting activity and use the AAP to provide necessary reports and monitor the workload of the contracting office. For contract actions, the plan shall contain, at a minimum:

(1) A brief description (descriptive title, perhaps one or two sentences if necessary);

(2) Estimated award amount;

(3) Requested award date;

(4) Name and phone number of contact person (usually the Project Officer);

(5) Other information required for OPDIV needs.

(b) Once the AAP is obtained from the program planning/budget office, the Contracting Officer/Contract Specialist shall initiate discussions with the assigned Project Officer for each planned negotiated acquisition over $100,000 except for:

(1) Acquisitions made under interagency agreements, and

(2) Contract modifications which exercise options, make changes authorized by the Changes clause, or add funds to an incrementally funded contract. (The HCA may prescribe procedures for contract actions not covered by this subpart.)

(c) The purpose of the discussions between the Contracting and Project Officers is to develop an individual acquisition planning schedule and to address areas that will need to be covered in the request for contract (RFC), including clearances, acquisition strategy, sources, etc. The Project Officer must either have a statement of work (SOW) ready at this time or must discuss in more detail the nature of the services/supplies that will be required.

(d) Standard lead-times for processing various types of acquisitions and deadlines for submission of acceptable RFCs (that is, RFCs which include all required elements such as clearances, funding documents, and an acceptable SOW) for award in a given fiscal year shall be established by the HCA or designee not lower than the CCO.

(e) The outcome of the discussions referenced in paragraph (c) of this section between the Project Officer and the Contracting Officer/Contract Specialist will be an agreement concerning the dates of significant transaction-specific acquisition milestones, including the date of submission of the RFC to the Contracting Officer. This milestone schedule document will be prepared with those dates and will be signed by the Project Officer and the Contracting Officer. The milestones cannot be revised except by mutual agreement of these same individuals. If the planning schedule indicates the need to obtain approval of a Justification for Other than Full and Open Competition, the HCA or CCO must sign the milestone agreement. This document shall be retained in the contract file. All other considerations that will affect the acquisition (technical, business, management) shall be addressed in the RFC (*see* 307.71).

■ 33. Revise section 307.170 to read as follows:

307.170 Program training requirements.

(a) HHS will maintain a program for certifying employees before they may be considered eligible for appointment as a program/project manager or COR/COTR.

(b) All HHS program/project managers, alternate program/project managers, CORs/COTRs, alternate CORs/COTRs, and at least fifty percent of the HHS program personnel performing the function of technical proposal evaluator on a technical evaluation team or panel for a competitively solicited HHS contract, shall have successfully completed the Department's ''Basic Project Officer'' course, or an equivalent course, before assuming the duties of their designated role, or take the next available class. This requirement applies to the initial technical proposal evaluation and any subsequent technical evaluations that may be required. (*Peer and objective reviewers are excluded from these requirements). Course equivalency for the ''Basic Project Officer'' course will be determined by the ASAM/OAMP. The Contracting Officer is responsible for ensuring that the program/project manager, COR/COTR, and proposal evaluators have successfully completed the required training. Non-information technology (IT) program/project managers and non-IT CORs/COTRs who have successfully completed the appropriate ''Basic Project Officer'' course, or an equivalent course, are highly encouraged to take the Department's one-day course entitled ''Early Warning Project Management System Workshop,'' or an equivalent Earned Value course. Program/Project managers and CORs/COTRs are highly encouraged to take the Department's ''Writing Statements of Work'' course, or an equivalent course. Peer and objective reviewers are excluded from these requirements. (*The peer review process pertains specifically to NIH in the peer review of applications for grants and contracts. Applications are evaluated by a peer review group composed of scientists from the extramural research community.) All courses are offered through HHS University.

■ 34. Revise section 307.170–1 to read as follows:

307.170–1 Training policy exceptions.

In the event there is an urgent requirement for a specific individual to serve as a program/project manager and COR/COTR (or alternate program/project manager and alternate COR/COTR) and that individual has not successfully completed the prerequisite training course(s), the HCA (not delegable) may waive the training requirement and authorize the individual to perform the project duties, provided that:

(a) The individual first meets with the cognizant Contracting Officer to review the HHS ''Project Officer's Contracting Handbook'' to discuss the important aspects of the contracting-program office relationship as appropriate to the circumstances; and

(b) The individual attends the next scheduled ''Basic Project Officer'' course, or an equivalent course, and, for those current and proposed IT program/project managers, as well as alternate IT program/project managers and IT CORs/COTRs (as well as alternate CORs/COTRs) assigned to HHS IT projects (including those designated as major or tactical by HHS), the next ''Early Warning Project Management System Workshop.''

■ 35. Add sections 307.170–3 through 307.170–9 to subpart 307.1 to read as follows:

Subpart 307.1—Acquisition Planning

307.170–3 Earned value training requirement for IT program/project managers and IT CORs/COTRs.
307.170–4 Required training in HHS' portfolio management tool.
307.170–5 Maintenance/refresher training requirement for program/project managers and CORs/COTRs.
307.170–6 Warranting of Other Transaction Officers for Other Transactions.
307.170–7 Training Requirements for Other Transaction Officers.
307.170–8 Appointment of an Other Transaction Officer Technical Representative for an Other Transaction.
307.170–9 Training requirement for an Other Transaction Officer Technical Representative.

Subpart 307.1—Acquisition Planning

* * * * *

307.170–3 Earned value training requirement for IT program/project managers and IT CORs/COTRs.

All current and proposed IT program/project managers, alternate IT program/project managers, IT CORs/COTRs, and alternate CORs/COTRs assigned to HHS IT projects (including those IT projects designated as major or tactical), regardless of dollar threshold, must successfully complete the Department's (offered through HHS University) one-day course entitled ''Early Warning Project Management System Workshop,'' or an equivalent Earned Value training course. Course equivalency will be determined jointly by the ASAM/OAMP and the HHS Office of the Chief Information Officer.

307.170–4 Reqired training in HHS' portfolio management tool.

All current and proposed IT program/project managers, as well as alternate IT program/project managers and IT CORs/COTRs (as well as alternate IT CORs/COTRs), regardless of dollar threshold, must successfully complete training in HHS' portfolio management tool (contact the HHS Office of the Chief Information Officer for additional information).

307.170–5 Maintenance/refresher training requirement for program/project managers and CORs/COTRs.

Program/Project Managers and CORs/COTRs who monitor one or more contracts are required to take 40 CLPs each year.

307.170–6 Warranting of Other Transaction Officers for Other Transactions.

(a) Other Transaction (OT) Officers shall possess the qualifications necessary to ensure that OTs are in compliance with applicable laws and regulations. The ASAM/OAMP will have the sole authority to warrant OT Officers at HHS. To receive a warrant as an HHS OT Officer, the individual must be a Contracting Officer, preferably with an unlimited warrant, with a Federal Acquisition Certification in Contracting (FAC–C) Level III, or a Level III or IV certified Grants Officer within HHS. Nominations for appointment of OT Officers shall be submitted to the Head of Contracting Activity in writing through appropriate organizational channels for review. The nomination package shall include the following:

(1) A completed Appendix A (''OT Officer's Warrant Application Form'') of HHS Other Transaction Authority Guidebook;

(2) A recommendation from the employee's immediate supervisor providing justification for the appointment of an HHS OT Officer;

(3) Current resume/OF 612/SF 171 and/or other documentation describing the employee's experience, education, and training relevant to the position for which warrant authority is being sought;

(4) A copy of the employee's most recent performance appraisal;

(5) Type of work to be performed under the warrant, i.e., executing OTs;

(6) A copy of the certificate issued under the HHS Acquisition Certification Program indicating the employee's current certification level and a copy of previous warrant certificate, if applicable; or a copy of the certificate issued under the HHS Grants Certification Program, if applicable; and

(7) Proof of successful completion of the ''Cooperative Agreements, CRADAs

& Other Transactions'' course taught by Federal Publications Seminars, or an equivalent course.

(b) For additional information, see *http://www.knownet.hhs.gov/acquisition/hhs_epp_postings/HHSGuidebook1-OTAMarch2005.doc.*

307.170–7 Training Requirements for Other Transaction Officers.

OT Officers must successfully complete the ''Cooperative Agreements, CRADAs & Other Transactions'' course, or an equivalent course, prior to appointment as an OT Officer. Grants Officers who serve as OT Officers are required to have successfully completed the following courses: CON 110 (''Mission Support Planning''); CON 111 (''Mission Strategy Execution,''); CON 112 (''Mission Performance,'') or CON 120 (''Mission Focused Contracting.''), or equivalent courses *prior* to being appointed as an OT Officer. The HHS OTA Board will determine course equivalency.

307.170–8 Appointment of an Other Transaction Officer Technical Representative for an Other Transaction.

The program office nominates the Other Transaction Officer Technical Representative (OTR). The OT Officer prepares an OTR delegation memorandum that describes the OTR's authority and assigns the OTR specific responsibilities, with limitations of authority, in writing. The OTR represents the OT Officer only to the extent delegated in the written appointment and does not have the authority to change the terms and conditions of the OT.

307.170–9 Training requirement for an Other Transaction Officer Technical Representative.

(a) Program personnel selected to serve as an OTR or an alternate OTR assigned to an OT, and at least fifty percent of the technical evaluators that review the initial and any subsequent proposals or revisions thereof, shall successfully complete the Department's ''Basic Project Officer'' course, or an equivalent course prior to being appointed. Determination of course equivalency shall be made by the HHS OTA Board.

(b) In addition to the Department's required ''Basic Project Officer'' course, the OTR or alternate OTR assigned to an OT, and at least fifty percent of the technical evaluators that review the initial and any subsequent proposals or revisions thereof, shall successfully complete the ''Cooperative Agreements, CRADAs & Other Transactions'' course, or an equivalent course, prior to being appointed and prior to assuming job duties associated with the OT.

(c) Refresher training in the policies and procedures of awarding cooperative agreements, CRADAs and OTs is required every three years.

307.302, 307.303, 307.304, and 307.307 [Removed]

■ 36. Remove subpart 307.3 (sections 307.302, 307.303, 307.304, and 307.307).

■ 37. Revise paragraph (b)(2) of section 307.7001 to read as follows:

307.7001 Distinction between acquisition and assistance.

* * * * *

(b) * * *

(2) The Department determines in a specific instance that the use of a type of contract is appropriate. That is, it is determined in a certain situation that specific needs can be satisfied best by using the acquisition process. However, this authority does not permit circumventing the criteria for use of acquisition or assistance instruments. Use of this authority is restricted to extraordinary circumstances and only with the prior approval of the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP).

* * * * *

■ 38. Revise section 307.7104 to read as follows:

307.7104 Transmittal.

The RFC must be conveyed to the contracting office by use of a cover memorandum. The cover memorandum must be signed by the head of the sponsoring program office and include both a statement attesting to the conclusiveness of the review described in 307.7103(b) and a list identifying all attachments to the RFC.

■ 39. Amend section 307.7105 by revising the introductory text for the section, the introductory text for paragraph (b)(4), and paragraphs (b)(4)(i) and (b)(7) to read as follows:

307.7105 Format and content.

The Department is in the process of standardizing a format for the RFC. In the interim, the information in paragraph (a) of this section must be included. Paragraph (b) contains information that must also be included if applicable.

* * * * *

(b) * * *

(4) *Special program clearances or approvals.* The following special program clearances or approvals should be reviewed for applicability to each acquisition. Those which are applicable should be addressed during the planning discussions between the Project Officer and Contracting Officer/Contract Specialist (see 307.104(c)) and immediate action should be initiated by the Project Officer to obtain the necessary clearances or approvals. The Contracting Officer/Contract Specialist shall provide a comprehensive checklist of these and any OPDIV special approvals, clearances, and requirements to the program office. If the approval or clearance has been requested and is being processed at the time of RFC submission, a footnote to this effect, including all pertinent details, must be included in this section.

(i) *Commercial activities.* (OMB Circular No. A–76). An RFC must contain a statement as to whether the proposed solicitation is or is not to be used as part of an OMB Circular No. A–76 public-private cost comparison. (See OMB Circular No. A–76, Performance of Commercial Activities.)

* * * * *

(7) *Special terms and conditions.* Any suggested special terms and conditions not already covered in the statement of work.

* * * * *

■ 40. Amend section 307.7106 by revising paragraphs (a) and (d) to read as follows:

307.7106 Statement of work.

(a) *General.* A statement of work (SOW) describes the work or services to be performed in reaching an end result without describing the method that will be used unless the method of performance is critical or required in order to obtain successful performance. The SOW should be clear and concise and must completely define the responsibilities of both the contractor and the Government. The SOW should be worded to make more than one interpretation virtually impossible.

* * * * *

(d) *Elements of the SOW.* The elements of the SOW will vary with the objective, complexity, size, and nature of the acquisition. In general, it should include the following:

(1) *Purpose of the project.* This includes a general description of the objectives of the project and the desired results.

(2) *Background information.* This includes a brief history of the project and the importance of the project to the overall program objectives.

(3) *A detailed description of the technical requirements.* The statement of work should provide sufficient detail to accurately reflect the Government's requirement. It should state what is to

be done without prescribing the method to be used and should include performance standards. The statement of work may be broken down into tasks and subtasks. The degree of breakout depends on the size and complexity of the project. The statement of work should indicate whether the tasks are sequential or concurrent.

(4) *Reference material.* All reference material to be used in the conduct of the project that indicates how the work is to be carried out must be identified. Applicability should be explained, and a statement made as to where the material can be obtained.

(5) *Level of effort.* When a level of effort is required, the number and type of personnel required should be stated. If known, the type and degree of expertise should be specified.

(6) *Special requirements.* (as applicable). An unusual or special contractual requirement, which would impact on contract performance, should be included as a separate section.

(7) *Deliverables reporting requirements.* All deliverables and/or reports must be clearly and completely described. Include the timeframe for completion, the format, and the number of copies.

PART 309—CONTRACTOR QUALIFICATIONS

■ 41. Revise section 309.403 to read as follows:

309.403 Definitions.

Acquiring agency's head or designee, as used in the FAR, shall mean, unless otherwise stated in this subpart, the head of the contracting activity. Acting in the capacity of the acquiring agency's head, the head of the contracting activity may make the required justifications or determinations, and take the necessary actions, specified in FAR 9.405, 9.406, and 9.407 for his or her respective activity, but only after obtaining the written approval of the debarring or suspending official, as the case may be.

Debarring official means the Assistant Secretary for Administration and Management, or his/her designee.

Initiating official means either the contracting officer, the head of the contracting activity, the Deputy Assistant Secretary for Acquisition Management and Policy, or the Inspector General.

Suspending official means the Assistant Secretary for Administration and Management, or his/her designee.

■ 42. Revise section 309.404 to read as follows:

309.404 List of parties excluded from Federal procurement and nonprocurement programs.

(c) The Office of Acquisition Management and Policy (OAMP) shall perform the actions required by FAR 9.404(c).

(4) OAMP shall maintain all documentation submitted by the initiating official recommending the debarment or suspension action and all correspondence and other pertinent documentation generated during the OAMP review.

■ 43. Amend section 309.405 by revising paragraph (a)(1) to read as follows:

309.405 Effect of listing.

(a) * * *

(1) If a Contracting Officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the Contracting Officer shall prepare a determination, including all pertinent documentation, and submit it through acquisition channels to the head of the contracting activity. The documentation must include the date by which approval is required and a compelling reason for the proposed action. Compelling reasons for award of a contract or consent to a subcontract with a debarred or suspended contractor include:

(i) The property or services to be acquired are available only from the listed contractor; or

(ii) The urgency of the requirement dictates that the Department conduct business with the listed contractor.

* * * * *

■ 44. Revise section 309.406–3 to read as follows:

309.406–3 Procedures.

(a) *Investigation and referral.* When an apparent cause for debarment becomes known, the initiating official shall prepare a report containing the information required by 309.470–2, along with a written recommendation, and forward it through appropriate channels to the debarring official. Reports shall be forwarded in accordance with 309.470–1. The debarring official, the Deputy Assistant Secretary for Acquisition Management and Policy, shall initiate an investigation.

(b) *Decision making process.* The debarring official shall review the results of the investigation, if any, and make a written determination whether or not debarment procedures are to be commenced. A copy of the determination shall be promptly sent through appropriate channels to the initiating official and the Contracting Officer. If it is determined that debarment procedures shall commence, the debarring official shall consult with the Office of General Counsel and then notify the contractor in accordance with FAR 9.406–3(c). If the proposed action is not based on a conviction or judgment and the contractor's submission in response to the notice raises a genuine dispute over facts material to the proposed debarment, the debarring official shall arrange for fact-finding hearings and take the necessary action specified in FAR 9.406–3(b)(2). The debarring official shall also ensure that written findings of facts are prepared, and shall base the debarment decisions on the facts as found, after considering information and argument submitted by the contractor and any other information in the administrative record. The Office of the General Counsel shall represent the Department at any fact-finding hearing and may present witnesses for HHS and question any witnesses presented by the contractor.

■ 45. Revise section 309.407–3 to read as follows:

309.407–3 Procedures.

(a) *Investigation and referral.* When an apparent cause for suspension becomes known, the initiating official shall prepare a report containing the information required by 309.470–2 along with a written recommendation and forward it through appropriate channels to the suspending official. Reports shall be forwarded in accordance with 309.470–1. The suspending official shall initiate an investigation.

(b) *Decision making process.* The suspending official shall review the results of the investigation, if any, and make a written determination whether or not suspension should be imposed. A copy of this determination shall be promptly sent through appropriate channels to the initiating official and the Contracting Officer. If it is determined that suspension shall be imposed, the suspending official shall consult with the Office of General Counsel and then notify the contractor in accordance with FAR 9.407–3(c). If the action is not based on an indictment, and, subject to the provisions of FAR 9.407–3(b)(2), the contractor's submission in response to the notice raises a genuine dispute over facts material to the suspension, the suspending official shall, after suspension has been imposed, arrange for fact-finding hearings and take the necessary actions specified in FAR 9.407–3(b)(2).

■ 46. Amend section 309.470–1 by revising the introductory text to read as follows:

309.470–1 Situations where reports are required.

A report incorporating the information required by 309.470–2 shall be forwarded, in duplicate, by the Contracting Officer through acquisition channels to OAMP when:

* * * * *

■ 47. Add part 311 to read as follows:

PART 311—DESCRIBING AGENCY NEEDS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

311.003 Defining Electronic Information Technology (EIT) requirements.

HHS officials who are defining agency needs for EIT products and services and performing market research to meet those needs can use the Buy Accessible Wizard (*http://www.buyaccessible.gov*) managed by the General Services Administration to document EIT requirements, identify the applicable Section 508 standards, and document the market research.

■ 48. Add part 312 to read as follows:

PART 312—ACQUISITION OF COMMERCIAL ITEMS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 312.1—Acquisition of Commercial Items—General

312.101 Policy.

(a) It is HHS policy to maximize its buying power, reduce acquisition administrative costs, and develop long-term, mutually beneficial, open partnerships with best-in-class providers of products and services. Accordingly, HHS has implemented a Strategic Sourcing Program under which Indefinite-Delivery/Indefinite-Quantity contracts (IDIQs) and Blanket Purchase Agreements (BPAs), known as HHS-wide Acquisition Contracts (HWACs), are awarded to allow for savings for commercial items and services across HHS and make the acquisition process more efficient.

(b) If consideration is being given to soliciting or acquiring a product or service from a source, other than HHS Contract Closeout IDIQs or Strategic Sourcing BPAs, when the category of the current requirement (e.g. Lab Supplies, Events Management) is encompassed in the portfolio of existing IDIQ or BPA categories a waiver request must be prepared and approved in advance of a purchase or processing of a requirement.

(c) The instructions, including approval requirements, and waiver form, are available at *http://dbh.ogam2000.com/HHS_Strategic_Sourcing/Data_Collection/waiver.asp*.

The following links provide more detailed information regarding the supplies, equipment, and services in each of the HWACs: the HHS Acquisition Integration and Modernization Web site: *http://intranet.hhs.gov/hwac/index.html* and the HHS Strategic Sourcing Web site: *http://intranet.hhs.gov/ssc/*.

PART 314—SEALED BIDDING

■ 49. Revise section 314.202–7 to read as follows:

314.202–7 Facsimile bids.

(c) If the HCA (not delegable) has determined that the contracting activity will allow use of facsimile bids and proposals, the HCA shall prescribe internal procedures, in accordance with the FAR, to ensure uniform processing and control.

314.213 [Removed]

■ 50. Remove section 314.213.

■ 51. Revise section 314.404–1 to read as follows:

314.404–1 Cancellation of invitations after opening.

(c) The HCA or CCO (not delegable) shall make the determinations required to be made by the agency head in FAR 14.404–1.

■ 52. Revise section 314.407–3 to read as follows:

314.407–3 Other mistakes disclosed before award.

(e) Authority has been delegated to the Departmental Protest Control Officer, Office of Acquisition Management and Policy, to make administrative determinations in connection with mistakes in bid alleged after opening and before award. This authority may not be redelegated.

(f) Each proposed determination shall have the concurrence of the Chief, General Law Division, Office of General Counsel.

(i) Doubtful cases shall not be submitted by the Contracting Officer directly to the Comptroller General, but, instead, shall be submitted to the Departmental Protest Control Officer.

■ 53. Amend section 314.407–4 by revising paragraph (d) to read as follows:

314.407–4 Mistakes after award.

* * * * *

(d) Each proposed determination shall have the concurrence of the Chief, General Law Division, Office of General Counsel.

PART 315—CONTRACTING BY NEGOTIATION

■ 54. Add section 315.204–1 to read as follows:

315.204–1 Uniform contract format.

(a) When preparing solicitations and resulting contracts, Contracting Officers/Contract Specialists are strongly encouraged to use as a guide the HHS Solicitation/Contract Structure Document found at *http://www.knownet.hhs.gov/acquisition/policy.htm*.

315.204–5 [Removed]

■ 55. Remove section 315.204–5.

315.209 [Amended]

■ 56. Amend section 315.209 by removing paragraph (g).

■ 57. Amend section 315.305 by revising paragraphs (a)(1), (a)(3)(i)(D), (a)(3)(ii)(B), the introductory text of (a)(3)(ii)(E)(*1*), (a)(3)(ii)(E)(*4*), (a)(3)(ii)(F)(*2*), and (a)(3)(ii)(F)(*3*) to read as follows:

315.305 Proposal evaluation.

(a)(1) *Cost or price evaluation.* (i) The Contracting Officer shall evaluate business proposals in accordance with the requirements set forth in FAR 15.404. The extent of cost or price analysis in each case depends on the contract type, the amount of the proposal, the technical complexity, and related cost or price. The Project Officer shall be requested to analyze the following elements, if applicable, to determine if they are necessary and reasonable for efficient contract performance:

(A) The number of labor hours proposed for the various labor categories and the mix in relation to the technical requirements;

(B) Types, numbers and hours/days of proposed consultants;

(C) The kinds and quantities of material, equipment, supplies, and services;

(D) Kinds and quantities of information technology;

(E) Logic of proposed subcontracting; and

(F) Travel proposed, including number of trips, locations, purpose, and travelers.

(ii) The Project Officer shall provide written comments, including the rationale for any exceptions to the elements. The Project Officer's

comments shall be used for negotiations or to support award without discussions. The Contracting Officer should also request assistance of a cost/price analyst, when necessary. The Contracting Officer's negotiation memorandum must include the rationale used in determining that the price or cost is fair and reasonable.

* * * * *

(3) *Technical evaluation.*

(i) * * *

(D) The technical evaluation plan shall be submitted to the Contracting Officer for review and approval before the solicitation is issued. The Contracting Officer shall make sure that the significant factors and subfactors relating to the evaluation are reflected in the evaluation criteria when conducting the review of the plan.

(ii) * * *

(B) *Role of the Project Officer.* (*1*) The Project Officer is the Contracting Officer's technical representative for the acquisition action. The Project Officer may be a voting member of the technical evaluation panel, and may also serve as the chairperson of the panel, unless prohibited by law or contracting activity procedures.

(*2*) The Project Officer is responsible for recommending panel members who are knowledgeable in the technical aspects of the acquisition and capable of identifying strengths and weaknesses in the proposals received. Government employees serving as panel members must be selected in accordance with the requirements set forth in 307.170.

(*3*) The Project Officer shall ensure that persons possessing expertise and experience in addressing issues relative to sex, race, national origin, and handicapped discrimination are included as panel members for acquisitions in which such issues are applicable.

(*4*) The Project Officer shall submit the list of recommended panel members to an official within the project office in a position at least one level higher. This official will review the list and select the chairperson.

(*5*) The Project Officer shall arrange for adequate and secure working space for the panel.

* * * * *

(E) *Continuity of evaluation process.* (*1*) The technical evaluation panel shall evaluate all original proposals, make recommendations to the chairperson regarding strengths and weaknesses of proposals, and, if required by the Contracting Officer, assist the Contracting Officer during communications and discussions, and review supplemental, revised and/or final proposal revisions. To the extent possible, the same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals. The following are examples of circumstances when it would not be necessary for the technical evaluation panel to evaluate revised proposals submitted during the acquisition:

* * * * *

(*4*) When continuity of the evaluation process is not possible, and either new evaluators are selected or the size of the evaluation panel is reduced, all proposals shall be reviewed by each panel member at the current stage of the acquisition (i.e., initial proposal, final proposal revisions, etc.). Also, guidance should be provided concerning what to do if an unusually large number of proposals are received, including how to determine what constitutes an unusually large number of proposals.

(F) * * *

(*2*) Decisions to disclose proposals to evaluators outside of the Government shall be made by the official responsible for appointing panel members in accordance with operating division procedures. The avoidance of organization conflict of interest and competitive relationships must be taken into consideration when making the decision to use outside evaluators.

(*3*) When it is determined to disclose a solicited proposal outside the Government for evaluation purposes, the following or similar conditions shall be included in the written agreement with evaluator(s) prior to disclosure:

Conditions for Evaluating Proposals

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal for evaluation purposes only.

The foregoing requirement does not apply to data obtained from another source without restriction.

Any notice or legend placed on the proposal by either the Department or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return to the Government the furnished copy of the proposal or abstract, and all copies thereof, to the Departmental office which initially furnished the proposal for evaluation.

Unless authorized by the Department's initiating office, the evaluator shall not contact the submitter of the proposal concerning any aspects of its contents.

The evaluator's employees and subcontractors shall abide by these conditions.

* * * * *

■ 58. Amend section 315.371 by revising the introductory text of paragraph (a) to read as follows:

315.371 Contract preparation and award.

(a) After details have been finalized with the selected offeror, the Contracting Officer shall:

* * * * *

■ 59. Amend section 315.372 by revising the introductory text and paragraph (a) to read as follows:

315.372 Preparation of negotiation memorandum.

The negotiation memorandum or summary of negotiations is a complete record of all actions leading to award of a contract and is prepared by the Contracting Officer/Contract Specialist to support the source selection decision discussed in FAR 15.308. It should be in sufficient detail to explain and support the rationale, judgments, and authorities upon which all actions were predicated. The memorandum will document the negotiation process and reflect the negotiator's actions, skills, and judgments in concluding a satisfactory agreement for the Government. The negotiation memorandum shall address each item listed below. If an item is not applicable, it shall be so stated in the memorandum. Information already contained in the contract file may be referenced rather than reiterated.

(a) *Description of articles and services and period of performance.* A description of articles and services, quantity, unit price, total contract amount, and period of contract performance should be set forth.

* * * * *

■ 60. Amend section 315.404–4 by revising paragraphs (b)(1), the introductory text of (b)(1)(ii), (c), (d)(1)(i), (d)(1)(ii), the introductory text of (d)(1)(iv), and (d)(3)(iv) to read as follows:

315.404–4 Profit.

(b) *Policy.* (1) The structured approach for determining profit or fee (hereafter called profit) provides a technique for establishing a profit objective for negotiation. A profit objective is that part of the estimated contract price objective or value which, in the judgment of the Contracting Officer, constitutes an appropriate amount of profit for the acquisition being considered. This technique allows for consideration of the profit factors described in paragraph (d) of this section. The Contracting Officer's analysis of these factors is based on available information such as proposals, audit data, assessment reports, preaward

surveys, etc. The structured approach provides a basis for documenting the profit objective. Any significant departure from this objective shall be explained. The amount of documentation depends on the dollar value and complexity of the proposed acquisition. The profit objective is a part of the overall negotiation objective and is directly related to the cost objective and any proposed sharing arrangement. The profit objective should be negotiated at the same time as the other cost items. The profit objective should be negotiated as a whole and not as individual profit factors.

(ii) The profit analysis factors in FAR 15.404–4(d) shall be used in lieu of the structured approach in the following circumstances. Factors considered inapplicable to the acquisition shall be excluded from the profit objective. Documentation shall be provided which includes the profit factor breakdown.

* * * * *

(c) *Contracting Officer responsibilities.* The Contracting Officer shall develop the profit objective. This objective shall realistically reflect the total overall task to be performed and the requirements placed on the contractor. The Contracting Officer shall not begin to develop the profit objective until a thorough review of proposed contract work has been made; a review of all available knowledge regarding the contractor pursuant to FAR subpart 9.1, including audit data, preaward survey reports and financial statements, as appropriate, has been conducted; and an analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost has been made.

(d) * * *

(1) * * *

(i) The Contracting Officer shall measure ''Contractor Effort'' by assigning a profit percentage within the designated weight range to each element of contract cost. The categories listed are for reference purposes only, but are broad and basic enough to provide guidance to other elements of cost. Facilities capital cost of money is not to be included. A total dollar profit shall be computed for ''Contractor Effort.''

(ii) The Contracting Officer shall use the total dollar profit for the ''Contractor Effort'' to calculate specific profit dollars for ''Other Factors''—cost risk, investment, performance, socioeconomic programs, and special situations. The Contracting Officer shall multiply the total dollar profit for the ''Contractor Effort'' by the weight assigned to each of the elements in the ''Other Factors'' category. Facilities capital cost of money is not included. Form HHS–674, Structured Approach Profit/Fee Objective, should be used. Form HHS–674 is illustrated in 353.370–674.

* * * * *

(iv) The structured approach was designed for arriving at profit objectives for other than nonprofit organizations. However, the structured approach can be used for nonprofit organizations if appropriate adjustments are made. The Contracting Officer shall use the modified structured approach in paragraph (d)(1)(iv)(B) of this section to establish profit objectives for nonprofit organizations.

* * * * *

(3) * * *

(iv) *Federal socioeconomic programs.* This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of a contractor's successful participation in Government sponsored programs such as small business, small disadvantaged business, women-owned small business, service-disabled veterans, handicapped sheltered workshops, and energy conservation efforts. The contractor's policies and procedures which energetically support Government socioeconomic programs and achieve successful results should be given positive considerations. Conversely, failure or unwillingness on the part of the contractor to support Government socioeconomic programs should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

* * * * *

■ 61. Amend section 315.606 by revising paragraph (b) to read as follows:

315.606 Agency procedures.

* * * * *

(b) The HCA or the HCA's designee shall be the point of contact for coordinating the receipt and handling of unsolicited proposals.

■ 62. Amend section 315.609 by revising the introductory text to read as follows:

315.609 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in FAR 15.609(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be provided to all prospective offerors of unsolicited proposals:

* * * * *

PART 316—TYPES OF CONTRACTS

■ 63. Add section 316.505 to read as follows:

316.505 Ordering.

(b)(5) The Department's task-order and delivery-order ombudsman is the Director, Strategic Acquisition Service, Program Support Center (PSC). The task-order and delivery-order ombudsmen for each of the Department's contracting activities are as follows:

AHRQ—Director, Office of Performance Accountability, Resources and Technology
CDC—Chief Information Officer
CMS—Chief Operating Officer
FDA—Director, Office of Acquisitions and Grants Services
HRSA—Associate Administrator, Office of Administration and Financial Management
Indian Health Service—Director, Office of Management Services
NIH—Senior Scientific Advisor for Extramural Research, Office of Extramural Research (R&D) and Senior Advisor to the Director (Other than R&D)
PSC—Director, Strategic Acquisition Service
SAMHSA—Executive Officer

■ 64. Revise section 316.603–3 to read as follows:

316.603–3 Limitations.

An official one level above the Contracting Officer shall make the written determination.

316.770–1 [Removed]

■ 65. Remove section 316.770–1.

PART 319—SMALL BUSINESS PROGRAMS

■ 66. Amend section 319.201 by revising paragraph (e) to read as follows:

319.201 General policy.

* * * * *

(e)(1) The Department's Small Business Program shall be carried out by appointed small business specialists (SBS) co-located within the OPDIVs. Appointments, and termination of appointments, shall be made in writing by the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). The Director, OSDBU, will exercise full management authority over small business specialists.

(2) One or more qualified SBS shall be appointed in the following activities:

Agency for Healthcare Research and Quality (AHRQ), Centers for Medicare & Medicaid Services (CMS), Substance Abuse and Mental Health Services Administration (SAMHSA), Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), Indian Health Service (IHS), National Institutes of Health (NIH), Centers for Disease Control (CDC), Program Support Center (PSC), and the Office of the Secretary (OS).

■ 67. Revise section 319.501 to read as follows:

319.501 General.

(e) Subsequent to the Contracting Officer's recommendation on Form HHS–653, Small Business Set-Aside Review Form, the SBS shall review each proposed acquisition strategy and either concur or non-concur with the Contracting Officer's recommendation. The Small Business Administration's Procurement Center Representative (SBA/PCR) shall also review the acquisition strategy and either concur or non-concur with the Contracting Officer's recommendation. If the Contracting Officer disapproves the SBS's and/or the SBA PCR's set-aside recommendation, the reasons must be documented on the Form HHS–653, and the form placed in the contract file. The Contracting Officer will make the final determination as to whether the proposed acquisition will be set-aside or not.

■ 68. Revise the heading of part 323 to read as follows:

PART 323—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

■ 69. Amend section 324.103 by revising paragraphs (a), (b), and (c) to read as follows:

324.103 Procedures.

(a) All requests for contract shall be reviewed by the contracting officer to determine whether the Privacy Act requirements are applicable. The Privacy Act requirements are applicable when the contract will require the contractor to design, develop, or operate any Privacy Act system of records on individuals to accomplish an agency function. When applicable, the contracting officer shall include the solicitation notification and contract clause required by FAR 24.104 in the solicitation, and the contract clause in the resultant contract. In addition, the contracting officer shall ensure that the solicitation notification, contract clause, and other pertinent information specified in this subpart are included in any contract modification which results in the Privacy Act requirements becoming applicable to a contract.

(b)(1) The Contracting Officer shall identify in the contract work statement the system(s) of records to which the Privacy Act and the implementing regulations are applicable.

(2) The Contracting Officer shall include the clause specified in 352.270–11 in Section H of any RFP or resulting contract to notify the contractor that it and its employees are subject to criminal penalties for violations of the Act (5 U.S.C. 552a(i)) to the same extent as HHS employees. The clause also requires that the contractor ensure that each of its employees knows the prescribed rules of conduct and each contractor employee is aware that he/she is subject to criminal penalties for violations of the Act. These provisions also apply to all subcontracts awarded under the contract which require the design, development or operation of a system of records. The Contracting Officer shall send the contractor a copy of 45 CFR part 5b, which includes the rules of conduct and other Privacy Act requirements.

(c) The Contracting Officer shall specify in the contract work statement and award the disposition to be made of the system(s) of records upon completion of contract performance. The contract work statement may require the contractor to destroy the records, remove personal identifiers, or turn the records over to the Contracting Officer. If there is a legitimate need for a contractor to keep copies of the records after completion of a contract, the contractor must take measures, as approved by the Contracting Officer, to keep the records confidential and protect the individuals' privacy.

* * * * *

324.202 [Redesignated as 324.203]

■ 70–A. Redesignate section 324.202 as section 324.203.

■ 70–B. Amend section 324.203 by revising paragraph (b) to read as follows:

324.203 Policy.

* * * * *

(b) The Contracting Officer, upon receiving a Freedom of Information Act (FOIA) request, shall follow Department and OPDIV procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) Officer and the General Law Division of the Office of General Counsel. The Contracting Officer must remember that only the FOI Officer has the authority to release or deny release of records. While the Contracting Officer should be familiar with the entire FOIA regulation in 45 CFR part 5, particular attention should be focused on §§ 5.65 and 5.66; also of interest are §§ 5.32, 5.33, and 5.35.

PART 325—[REMOVED]

■ 71. Remove part 325.

PART 330—COST ACCOUNTING STANDARDS

■ 72. Revise section 330.201–5 to read as follows:

330.201–5 Waiver.

(c) The requirements of FAR 30.201–5 shall be exercised by the Director, Division of Acquisition Policy (DAP). Requests shall be forwarded through normal acquisition channels to the DAP.

PART 332—CONTRACT FINANCING

■ 73. Revise section 332.402 to read as follows:

332.402 General.

(e) The HCA shall determine whether an advance payment is in the public interest in accordance with FAR 32.402(c)(1)(iii)(A). This authority is non delegable.

■ 74. Amend section 332.407 by revising the introductory text of paragraph (d) to read as follows:

332.407 Interest.

(d) The HCA (not delegable) is authorized to make the determinations in FAR 32.407(d) and as follows. Interest-free advance payments may also be approved for educational institutions and other nonprofit organizations, whether public or private, performing work under nonprofit contracts (without fee) involving health services, educational programs, or social service programs, such as:

* * * * *

■ 75. Revise section 332.501–2 to read as follows:

332.501–2 Unusual progress payments.

(a)(3) The approval of an unusual progress payment shall be made by the HCA (not delegable).

■ 76. Revise section 332.702 to read as follows:

332.702 Policy.

An incrementally funded contract is a multiple year contract in which funds are allocated to cover specific phases or increments of performance.

(a) Incremental funding may be used in cost-reimbursement type contracts for the acquisition of severable services. It shall not be used in contracts for construction or architect-engineer services. Incremental funding allows severable cost-reimbursement type contracts awarded for more than one year to be funded from succeeding fiscal years.

(b) It is Departmental policy that multiple year contracts be fully funded whenever possible. However, incrementally funded contracts may be used when:

(1) A project, which is part of an approved program, is anticipated to be of multiple year duration, but funds are not currently available to cover the entire project;

(2) The project represents a valid need for the fiscal year in which the contract is awarded and for the succeeding fiscal years of the project's duration;

(3) The project is so significant to the approved program that there is reasonable assurance that it will command a high priority for proposed appropriations to cover the entire multiple year duration; and

(4) The statement of work is specific and is defined by separate phases or increments so that, at the completion of each, progress can be effectively measured.

■ 77. Revise section 332.703–1 to read as follows:

332.703–1 General.

(b) The following general guidelines are applicable to incrementally funded contracts:

(1) The estimated total cost of the project (all planned phases or increments) is to be taken into consideration when determining the requirements which must be met before entering into the contract; i.e., justification for noncompetitive acquisition, approval of award, etc.

(2) The RFP and resultant contract are to include a statement of work which describes the total project covering the proposed multiple year period of performance and indicating timetables consistent with planned phases or increments and corresponding allotments of funds.

(3) Offerors' technical and cost proposals must include the entire project and shall show distinct phases or increments and the multiple year period of performance.

(4) Negotiations will be conducted based upon the total project, including all planned phases or increments, and the multiple year period of performance.

(5) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance, unless the Contracting Officer determines it is advantageous to the Government to fund the contract for a lesser period. In that event, the Contracting Officer shall ensure that the obligated funds are sufficient to cover a complete phase or increment of performance representing a material and measurable part of the total project and the period of time that the funds cover shall be stated in the contract.

(6) An incrementally funded contract must contain precise requirements for progress reports to be sent to the Project and Contracting Officers. These reports will enable the contract to be effectively monitored. The Project Officer shall prepare periodic performance evaluation reports and provide them to the Contracting Officer.

■ 78. Revise section 332.704 to read as follows:

332.704 Limitation of cost or funds.

See subpart 342.71, ''Administrative Actions for Cost Overruns,'' for procedures for handling anticipated cost overruns.

332.705 [Removed]

■ 79. Remove section 332.705.

332.902 [Removed]

■ 80. Remove section 332.902.

PART 333—PROTESTS, DISPUTES, AND APPEALS

333.102 [Amended]

■ 81. Amend section 333.102 by removing paragraph (a).

■ 82. Amend section 333.103 by revising paragraph (f)(3) to read as follows:

333.103 Protests to the agency.

(f) * * *

(3) Protests received after award shall be treated as indicated in FAR 33.103(f)(3).

■ 83. Revise section 333.104 to read as follows:

333.104 Protests to GAO.

(a) *General procedures.* (3)(ii) The DPCO shall process protests filed with GAO, whether pre- or post award. Protest files shall be prepared by the contracting office and distributed as follows: Two copies to the DPCO, one copy to the contracting activity's protest control officer, and one copy to OGC–GLD. In addition to the items listed in 33.104(a)(3)(ii)(A) through (G), the protest file shall include the following documents:

(H) The current status of award. When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.

(I) A copy of any mutual agreement to suspend work on a no-cost basis, when appropriate (see FAR 33.104(c)(4)).

(J) Copies of the notice of protest given offerors and other parties when the notice is appropriate (see FAR 33.104(a)(2)).

(K) A copy of the negotiation memorandum, when applicable.

(L) The name and telephone number of the person in the contracting office who may be contacted for information relevant to the protest.

(M) A copy of the competitive range memorandum.

(N) The contracting officer's statement of facts and circumstances, including a discussion of the merits of the protest, and conclusions and recommendations, including documentary evidence on which they are based. The files shall be assembled in an orderly manner and shall have an index of enclosures and any document referred to therein.

(4) The DPCO is responsible for making the necessary distributions referenced in FAR 33.104(a)(4).

(5) The Contracting Officer shall furnish the protest file containing the documentation specified in paragraph (a)(3)(ii) of this section (with the exception of the contracting officer statement of facts and circumstances) and FAR 33.104(a)(3)(ii)(A) through (G) to the DPCO within fourteen (14) calendar days from receipt of the protest. The contracting officer shall submit the contracting officer's statement of facts and circumstances within twenty-one (21) calendar days from receipt of the protest. Since the statute allows only a short time period in which to respond to protests lodged with GAO, the Contracting Officer shall handle each protest on a priority basis. The DPCO shall submit copies of the protest file to GAO, the protestor, and any intervenors in accordance with FAR 33.104(a)(4)(i).

(6) Since the DPCO will furnish the protest file to GAO, the protestor, and any intervenors, comments on the file from the protestor and any intervenors will be sent to the DPCO.

(7) The DPCO, Division of Acquisition Policy (DAP), shall serve as the GAO point of contact for protests lodged with GAO.

(b) *Protests before award.* (1) To make an award notwithstanding a protest, the Contracting Officer shall prepare a finding using the criteria in FAR 33.104(b)(1), have it executed by the HCA (not delegable), and forward it, along with a written request for approval to make the award, to the

Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP).

(2) If the request to make an award notwithstanding the protest is approved by the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP), the DPCO shall notify GAO. Whether the request is approved or not, the DPCO shall telephonically notify the contracting activity's protest control officer of the decision of the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP), and the contracting activity's protest control officer shall immediately notify the Contracting Officer. The DPCO shall confirm the decision by memorandum to the contracting activity's protest control officer.

(c) *Protests after award.* (2) If the Contracting Officer believes performance should be allowed to continue notwithstanding the protest, a finding shall be prepared by the Contracting Officer using the criteria in FAR 33.104(c)(2), executed by the HCA (not delegable), and forwarded, along with a written request for approval, to the Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP). The same procedures for notification stated in paragraph (b)(2) of this section shall be followed.

(d) *Findings and notice.* The written notice required by FAR 33.104(d) shall be provided to the protestor and any intervenors by the DPCO.

(g) *Notice to GAO.* The Deputy Assistant Secretary for Acquisition Management and Policy (DASAMP) shall be the official to comply with the requirements of FAR 33.104(g).

■ 84. Revise section 333.203 to read as follows:

333.203 Applicability.

(c) The Secretary has designated the Armed Services Board of Contract Appeals (ASBCA) as the authorized ''Board'' to hear and determine disputes for the Department.

■ 85. Revise section 333.211 to read as follows:

333.211 Contracting officer's decision.

(a)(2) The contracting officer shall refer a proposed final decision to the Office of General Counsel-General Law Division (OGC–GLD), for advice as to the legal sufficiency and format before sending the final decision to the contractor. The contracting officer shall provide OGC–GLD with the pertinent documents with the submission of each proposed final decision.

(a)(4)(v) When using the paragraph in FAR 33.211 (a)(4)(v), the contracting officer shall insert the words ''Armed Services'' before each mention of the term ''Board of Contract Appeals''.

(h) At any time within the period of appeal, the contracting officer may modify or withdraw his/her final decision. If an appeal from the final decision has been taken to the ASBCA, the contracting officer will forward his/her recommended action to OGC–GLD with the supplement to the contract file which supports the recommended correction or amendment.

■ 86. Revise section 333.212 to read as follows:

333.212 Contracting officer's duties upon appeal.

(a) Appeals shall be governed by the rules set forth in the ''Rules of the Armed Services Board of Contract Appeals,'' or by the rules established by the U.S. Court of Federal Claims, as appropriate.

(b) The Office of General Counsel-General Law Division (OGC-GLD) is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the ASBCA. A decision by the ASBCA will be transmitted by the Government Trial Attorney to the appropriate contracting officer for compliance in accordance with the ASBCA's decision.

(c) If an appeal is filed with the ASBCA, the contracting officer shall assemble a file within 30 days of receipt of an appeal, or advice that an appeal has been filed, that consists of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witness on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent. The contracting officer shall furnish the appeal file to the Government Trial Attorney for review and approval. After approval, the contracting officer shall prepare four copies of the file, one for the ASBCA, one for the appellant, one for the Government Trial Attorney, and one for the contracting office.

(d) At all times after the filing of an appeal, the contracting officer shall render whatever assistance is requested by the Government Trial Attorney. When an appeal is set for hearing, the concerned contracting officer shall be responsible for providing Government witnesses and specified physical and documentary evidence to the Trial Attorney. The Trial Attorney shall ensure the presence of all witnesses and documentary evidence at both the pre-hearing conference and hearing.

(e) If a contractor which has filed an appeal with the ASBCA elects to accept fully the decision from which the appeal was taken, or any modification to it, and gives written notification of acceptance to the Government Trial Attorney or the concerned contracting officer, the Government Trial Attorney will notify the ASBCA of the disposition of the dispute in accordance with Rule 27 of the ASBCA.

(f) If the contractor has elected to appeal to the U.S. Court of Federal Claims, the U.S. Department of Justice will represent the Department. However, the contracting officer shall still coordinate all actions through OGC–GLD.

■ 87. Amend section 333.212–70 by revising paragraph (a) to read as follows:

333.212–70 Formats.

(a) The following format is suggested for use in transmitting appeal files to the ASBCA:

Your reference:
(Docket No.)
(Name)
Recorder, Armed Services Board of Contract Appeals
Skyline Six 5109 Leesburg Pike
Falls Church, Virginia 22041

Dear (Name):

Transmitted herewith are documents relative to the appeal under Contract No. ____ with the _____
(Name of contractor)
in accordance with the procedures under Rule 4. The Government Trial Attorney for this case is
(*Insert General Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, DC 20201*).

The request for payment of charges resulting from the processing of this appeal should be addressed to:
(Insert name and address of cognizant finance office.)

Sincerely yours,

Contracting Officer
Enclosures

* * * * *

PART 334—[REMOVED]

■ 88. Remove part 334.

PART 335—RESEARCH AND DEVELOPMENT CONTRACTING

■ 89. Amend section 335.070–2 by revising the introductory text and paragraph (a) to read as follows:

335.070–2 Amount of cost-sharing.

When cost-sharing is appropriate, use the following guidelines to determine the amount of cost participation by the contractor:

(a) The amount of cost participation should depend on the extent to which the research effort or results are likely to enhance the performing organization's capability, expertise, or competitive position, and the value of this enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development have little or no production or other service activities and may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, contractor cost participation could reasonably range from as little as 1 percent or less of the total project cost, to more than 50 percent of the total project cost. Ultimately, the Contracting Officer should bear in mind that cost-sharing is a negotiable item. As such, the amount of cost-sharing should be proportional to the anticipated value of the contractor's gain.

* * * * *

■ 90. Add part 339 to read as follows:

PART 339—ACQUISITION OF INFORMATION TECHNOLOGY

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

339.201–10 Clarification.

FAR Subpart 39.2, Electronic and Information Technology, requires Federal agencies to ensure that, when acquiring EIT, Federal employees with disabilities and members of the public with disabilities have access to and use of information and data that is comparable to individuals without disabilities. This EIT access requirement does not apply to a contractor's internal workplaces. EIT that is not used nor accessed by Federal employees or members of the public is not subject to the Architectural and Transportation Barriers Compliance Board (Access Board) standards. Contractors in their professional capacity are not members of the public for purposes of Section 508.

339.201–70 Required provision and contract clause.

When acquiring EIT, the Contracting Officer shall insert the provision at 352.270–19(a) in solicitations and the clause in 352.270–19(b) in contracts and orders for projects that will develop, purchase, maintain, or use electronic and information technology (EIT), unless these EIT products and/or services are incidental to the project. (Note: Other exceptions to this requirement can be found at FAR 39.204.)

PART 342—CONTRACT ADMINISTRATION

■ 91. Revise section 342.705 to read as follows:

342.705 Final indirect cost rates.

(a) The Director, Division of Cost Allocation of the Program Support Center, within each servicing HHS regional office, has been delegated the authority to establish indirect cost rates, research patient care rates, and, as necessary, fringe benefit, computer, and other special costing rates for use in contracts and grants awarded to State and local governments, colleges and universities, hospitals, and other nonprofit organizations.

(b) The Division of Financial Advisory Services of the National Institutes of Health has the authority to establish indirect cost rates, fringe benefit rates, etc., for use in contracts and grants awarded to commercial organizations.

■ 92. Revise section 342.7001 to read as follows:

342.7001 Purpose.

Contract monitoring is an essential element of contract administration and is performed jointly by the Project Officer and the Contracting Officer. This subpart describes the Department's operating concepts.

■ 93. Revise section 342.7002 to read as follows:

342.7002 Contract monitoring responsibilities.

(a) The contract establishes the obligations of both the Government and the contractor. The Contracting Officer is the only person authorized to make changes to the contract. The Contracting Officer must confirm all changes in writing.

(b) The Contracting Officer is responsible for assuring compliance with all the terms and conditions of the contract. The Contracting Officer shall inform the contractor by letter (if not already stipulated in the contract) of the authorities and responsibilities of the Government personnel involved with the contract.

(c) The Contracting Officer must depend on program, technical, and other personnel for assistance and advice in monitoring the contractor's performance, and in other areas of postaward administration. The Contracting Officer must assure that these individuals understand and carry out their assigned responsibilities. The individual roles and corresponding responsibilities typically involve, but are not limited to, the following:

(1) The role of program and technical personnel in monitoring the contract is to assist and/or advise the Contracting Officer or act as his/her representative when so designated by the Contracting Officer. Activities may include:

(i) Providing technical monitoring during contract performance, and issuing letters to the contractor and Contracting Officer relating to delivery, acceptance, or rejection in accordance with the terms of the contract;

(ii) Assessing contractor performance, including inspection and testing of products and evaluation of reports and data;

(iii) Recommending necessary changes to the schedule of work and period of performance in order to accomplish the objectives of the contract. Program officials must provide the Contracting Officer a written request along with an appropriate justification and a funding document if additional funds are needed;

(iv) Reviewing invoices/vouchers and recommending approval/disapproval action by the Contracting Officer, to include comments regarding anything unusual discovered in the review;

(v) Reviewing and recommending approval or disapproval of subcontractors, overtime, travel, and key personnel changes; and

(vi) Participating, as necessary, in various phases of the contract closeout process.

(2) The role of the Project Officer in monitoring the contract includes the applicable activities set forth in paragraph (c)(1) of this section. The Project Officer also shall do the following:

(i) Submit periodic reports to the Contracting Officer that concisely explain the status of the contract, and include recommended actions for any problems reported. Provide the Contracting Officer with written notification of evaluation and approval/disapproval of contract deliverables and of completion of tasks or phases. The Contracting Officer or designee will provide the contractor with written

notification of approval or disapproval and include a copy in the contract file;

(ii) Monitor the technical aspects of the contract, identify existing and potential problems that threaten performance, and immediately inform the Contracting Officer of deviations from contract objectives or from any technical or delivery requirements;

(iii) Immediately notify the head of the program office whenever it is determined that objectives are not being met and provide specific recommendations of actions to be taken. The Contracting Officer shall receive a copy of the Project Officer's report and recommendations;

(iv) Within 120 days after contract completion, submit a final written assessment report to the Contracting Officer. The report should include analysis of the contractor's performance, including the contract and program objectives achieved and missed. A copy of the final assessment report shall be forwarded to the head of the program office responsible for the program for management review and follow-up, as necessary; and

(v) Accompany and/or provide, when requested, technical support to the HHS auditor in the conduct of visual inspections.

(3) The roles of the contract administrator, auditor, cost analyst, and property administrator are to assist and/or advise the Contracting Officer in postaward administration activities such as:

(i) Evaluation of contractor systems and procedures, to include accounting policies and procedures, purchasing policies and practices, property accounting and control, wage and salary plans and rate structures, personnel policies and practices, etc.;

(ii) Processing of disputes under the Disputes clause and any resultant appeals;

(iii) Modification or termination of the contract; and

(iv) Determination of the allowability of cost charges to incentive or cost-reimbursement type contracts and progress payments under fixed-price contracts. This is especially important when award is made to new organizations or those with financial weaknesses.

(d) The Contracting Officer is responsible for assuring that contractor performance and contract monitoring conform with contract terms. If performance is not satisfactory or if problems are anticipated, it is essential that the Contracting Officer take immediate action to protect the Government's rights under the contract. The Contracting Officer shall notify his/her immediate supervisor of problems that cannot be resolved within contract limitations and whenever contract or program objectives are not met. The notification shall include a statement of action being taken by the Contracting Officer.

■ 94. Revise section 342.7003–1 to read as follows:

§ 342.7003–1 Policy.

(a) All solicitations and resultant contracts (other than awards made using simplified acquisition procedures) shall contain the withholding of contract payments clause at 352.232–9, and an excusable delays clause, or a clause which incorporates the definition of excusable delays. Use the excusable delays clause at 352.249–14 when the solicitation and resultant contract (other than purchase orders) does not contain a default or other excusable delays clause.

(b) When appropriate, the Contracting Officer may withhold any contract payment when a required report is overdue, or the contractor fails to perform or deliver required work or services.

■ 95. Revise section 342.7003–2 to read as follows:

§ 342.7003–2 Procedures.

(a) The Contracting Officer is responsible for initiating immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting terms of the contract. Compliance with the reporting terms includes those reports to be submitted directly to the payment office. The payment office shall notify the Contracting Officer promptly when such a report is not submitted on time.

(b) When the contract contains a termination for default clause, the contractor's failure to submit any report, perform services, or deliver work when required by the contract is considered a default in performance. The Contracting Officer shall immediately issue a formal ten-day cure notice pursuant to FAR 49.607. The notice shall include a statement to the effect that payments will be withheld if the default is not cured within the time frame specified in the notice or if the default is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the Contracting Officer shall not initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the Contracting Officer shall initiate withholding action on all contract payments and shall determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the contractor's failure to submit any required report, perform services, or deliver work when required by the contract shall be considered a failure to perform. The Contracting Officer shall immediately issue a written notice to the contractor specifying the failure and providing a ten-day period (or longer period if the Contracting Officer deems it necessary) in which the contractor shall cure the failure or provide reasons for an excusable delay. The notice shall include a statement to the effect that payments will be withheld if the default is not cured within the time specified in the notice or if the default is not determined to be excusable.

(1) If the failure is cured or is determined to be excusable, the Contracting Officer shall not initiate the withholding action.

(2) If the failure is not determined to be excusable or a response is not received within the allotted time, the Contracting Officer shall initiate withholding action on all contract payments and shall determine whether termination for convenience or other action would be in the best interest of the Government.

(d) The Contracting Officer should consult FAR subpart 49.4 for further guidance before taking any of the actions described in this section.

■ 96. Revise section 342.7003–3 to read as follows:

§ 342.7003–3 Withholding payments.

(a) When making the determination that contract payments should be withheld in accordance with the Withholding of Contract Payments clause, the Contracting Officer shall immediately notify the servicing finance office in writing of the determination to withhold payments. The notice of suspension shall contain all information necessary for the finance office to identify the contract, *i.e.*, contract number, task/delivery order number, contractor name and address, etc.

(b) The Contracting Officer shall immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

(c) When the contractor cures the default or failure, the Contracting Officer shall immediately notify, in writing, all recipients of the notice of suspension that the suspension is to be lifted and contract payments are to be resumed.

(d) When exercising actions regarding the withholding of payment procedures, the Contracting Officer must be careful not to waive any of the Government's rights when corresponding with the contractor or when taking any other actions.

■ 97. Revise section 342.7100 to read as follows:

§ 342.7100 Scope of subpart.

This subpart sets forth the procedures to follow when a cost overrun is anticipated. A cost overrun occurs when the allowable actual cost of performing a cost-reimbursement type contract exceeds the total estimated cost specified in the contract.

■ 98. Amend section 342.7101–2 by revising the introductory text of paragraph (a) and paragraph (b)(3) to read as follows:

§ 342.7101–2 Procedures.

(a) Upon notification that a cost overrun is anticipated, the Contracting Officer shall inform the contractor to submit a request for additional funds which shall include:

* * * * *

(b) * * *

(3) Maintain continuous follow-up with the program office to obtain a timely decision as to whether the work under the contract should continue and additional funds be provided, or the contract terminated. An appropriate written statement and funding authority, or a formal request for termination, must support the decision of the program office. After receiving the decision by the program office, the Contracting Officer shall promptly notify the contractor in writing of the following:

(i) The specified amount of additional funds allotted to the contract; or

(ii) Work will be discontinued when the allotted funds are exhausted, and any work performed after that date is at the contractor's risk; or

(iii) The Government is considering whether to allot additional funds to the contract and will notify the contractor as soon as possible, but that any work performed after the currently allotted funds are exhausted is at the contractor's risk. Timely, formal notification of the Government's intention is essential in order to preclude loss of contractual rights in the event of dispute, termination, or litigation.

* * * * *

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 99. Revise section 352.202–1 to read as follows:

§ 352.202–1 Definitions.

As prescribed in 302.201, use the FAR Definitions clause at 52.202–1 as modified:

Definitions (January 2006)

(a) In accordance with 52.202–1(a)(1), substitute the following as paragraph (a):

''(a) The term ''Secretary'' or ''Head of the Agency'' (also called ''Agency Head'') means the Secretary, Deputy Secretary, or any Assistant Secretary, Administrator or Commissioner of the Department of Health and Human Services; and the term ''his/her duly authorized representative'' means any person, persons, or board authorized to act for the Secretary.''

(b) In accordance with 52.202–1(a)(1), add the following paragraph (h):

''(h) The term ''Project Officer'' means the person who monitors the technical aspects of contract performance. The Project Officer is not authorized to issue any instructions or directions which cause any increase or decrease in the scope of work which would result in the increase or decrease in the price of this contract, or changes in the delivery schedule or period of performance of this contract. If applicable, the Project Officer is not authorized to receive or act upon any notification or revised cost estimate provided by the Contractor in accordance with the Limitation of Cost or Limitation of Funds clauses of this contract.''

■ 100. Revise section 352.215–1 to read as follows:

§ 352.215–1 Instructions to offerors—Competitive acquisition.

Insert the following paragraph (e) in place of paragraph (e) of the provision at FAR 52.215–1:

(e) *Restriction on disclosure and use of data.* (1) The proposal submitted in response to this request may contain data (trade secrets; business data, e.g., commercial information, financial information, and cost and pricing data; and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; provided, that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following statements, specifying the particular portions of the proposal which are to be restricted: ''Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) officials of the Department of Health and Human Services, data contained in the portions of this proposal which have been specifically identified by page number, paragraph, etc. by the offeror as containing restricted information shall not be used or disclosed except for evaluation purposes.

The offeror acknowledges that the Department may not be able to withhold a record (data, document, etc.) nor deny access to a record requested pursuant to the Act and that the Department's FOI officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act. The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, etc. or other identification).''

(2) In addition, the offeror must mark each page of data it wishes to restrict with the following statement:

''Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.''

(3) Offerors are cautioned that proposals submitted with restrictive statements or statements differing in substance from those cited above may not be considered for award. The Government reserves the right to reject any proposal submitted with nonconforming statement(s).

■ 101. Revise section 352.215–70 to read as follows:

§ 352.215–70 Late proposals and revisions.

As prescribed in 315.208, the following provision may be included in the solicitation:

Late Proposals and Revisions (January 2006)

Notwithstanding the procedures contained in FAR 52.215–1(c)(3) of the provision of this solicitation entitled Instructions to Offerors—Competitive Acquisition, a proposal received after the date specified for receipt may be considered if it appears to offer the best value to the Government and it was received before proposals were distributed for evaluation, or within five calendar days after the exact time specified for receipt, whichever is earlier.

(End of provision)

■ 102. Amend section 352.216–72 by revising the title and paragraph (a)(4) of the ''Additional Cost Principles'' clause to read as follows:

§ 352.216–72 Additional cost principles.

* * * * *

Additional Cost Principles (January 2006)

(a) * * *

(4) Bid and proposal costs do not include independent research and development costs

covered by the following paragraph, or preaward costs covered by paragraph 36 of Attachment B to OMB Circular A–122.

* * * * *

■ 103. Revise section 352.223–70 to read as follows:

352.223–70 Safety and health.

The following clause shall be used as prescribed in 323.7002:

Safety and Health (January 2006)

(a) To help ensure the protection of the life and health of all persons, and to help prevent damage to property, the Contractor shall comply with all Federal, State and local laws and regulations applicable to the work being performed under this contract. These laws are implemented and/or enforced by the Environmental Protection Agency, Occupational Safety and Health Administration and other agencies at the Federal, State and local levels (Federal, State and local regulatory/enforcement agencies).

(1) In addition, the following regulations must be followed when developing and implementing health and safety operating procedures and practices for both personnel and facilities involving the use or handling of hazardous materials and the conduct of research, development, or test projects:

(i) 29 CFR 1910.1030, Bloodborne pathogens; 29 CFR 1910.1450, Occupational exposure to hazardous chemicals in laboratories; and other applicable occupational health and safety standards issued by the Occupational Health and Safety Administration (OSHA) and included in 29 CFR Part 1910. These regulations are available at *http://www.osha.gov/comp-links.html.*

(ii) Nuclear Regulatory Commission Standards and Regulations, pursuant to the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.). Copies may be obtained from the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) The following guidelines are recommended for use in developing and implementing health and safety operating procedures and practices for both personnel and facilities:

(i) Biosafety in Microbiological and Biomedical Laboratories, CDC and NIH, HHS. This publication is available at *http://bmbl.od.nih.gov/index.htm.*

(ii) Prudent Practices for Safety in Laboratories (1995), National Research Council, National Academy Press, 500 Fifth Street, NW., Lockbox 285, Washington, DC 20055 (ISBN 0–309–05229–7). This publication can be obtained by telephoning 800–624–8373. It also is available at *http://www.nap.edu/catalog/4911.html.*

(b) Further, the Contractor shall take or cause to be taken additional safety measures as the Contracting Officer, in conjunction with the project or other appropriate officers, determines to be reasonably necessary. If compliance with these additional safety measures results in an increase or decrease in the cost or time required for performance of any part of work under this contract, an equitable adjustment will be made in accordance with the applicable ''Changes'' clause set forth in this contract.

(c) The Contractor shall maintain an accurate record of, and promptly report to the Contracting Officer, all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials or hazardous operations; the injury or death of any person; and/or damage to property incidental to work performed under the contract and all violations for which the Contractor has been cited by any Federal, State or local regulatory/enforcement agency. The report shall include a copy of the notice of violation and the findings of any inquiry or inspection, and an analysis addressing the impact these violations may have on the work remaining to be performed. The report shall also state the required action(s), if any, to be taken to correct any violation(s) noted by the Federal, State or local regulatory/enforcement agency and the time frame allowed by the agency to accomplish the necessary corrective action.

(d) If the Contractor fails or refuses to comply with the Federal, State or local regulatory/enforcement agency's directive(s) regarding any violation(s) and prescribed corrective action(s), the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action (as approved by the Federal, State or local regulatory/enforcement agencies) has been taken and documented to the Contracting Officer. No part of the time lost due to any stop work order shall be subject to a claim for extension of time or costs or damages by the Contractor.

(e) The Contractor shall insert the substance of this clause in each subcontract involving toxic substances, hazardous materials, or hazardous operations. Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

(End of clause)

■ 104. Revise section 352.224–70 to read as follows:

352.224–70 Confidentiality of information.

The following clause covers the policy set forth in subpart 324.70 and is used in accordance with the instructions set forth in 324.7004.

Confidentiality of Information (January 2006)

(a) Confidential information, as used in this clause, means information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization.

(b) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the ''Disputes'' clause.

(c) If it is established elsewhere in this contract that information to be utilized under this contract, or a portion thereof, is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(d) Confidential information, as defined in paragraph (a) of this clause, shall not be disclosed without the prior written consent of the individual, institution, or organization.

(e) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor should obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(f) Contracting Officer determinations will reflect the result of internal coordination with appropriate program and legal officials.

(g) The provisions of paragraph (d) of this clause shall not apply to conflicting or overlapping provisions in other Federal, State, or local laws.

(End of clause)

■ 105. Amend section 352.228–7 by revising paragraph (d) of the ''Insurance—Liability to Third Persons'' clause to read as follows:

352.228–7 Insurance—Liability to third persons.

* * * * *

(d) The Government's liability under paragraph (c) of this clause is limited to the amounts reflected in final judgments, or settlements approved in writing by the Government, but in no event to exceed the funds available under the Limitation of Cost or Limitation of Funds clause of this contract. Nothing in this contract shall be construed as implying that, at a later date, the Government will request, or the Congress will appropriate, funds sufficient to meet any deficiencies.

* * * * *

■ 106. Revise section 352.232–9 to read as follows:

352.232–9 Withholding of contract payments.

Insert the following clause in all solicitations and contracts other than awards made using simplified acquisition procedures:

Withholding of Contract Payments (January 2006)

Notwithstanding any other payment provisions of this contract, failure of the Contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, may result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Contractor as defined by the clause entitled ''Excusable Delays'' or ''Default'', as applicable. The Government shall immediately notify the Contractor of its

intention to withhold payment of any invoice or voucher submitted.

(End of clause)

352.232–74 [Removed]

■ 107. Remove section 352.232–74.

■ 108. Revise section 352.232–75 to read as follows:

352.232–75 Incremental funding.

The following provision shall be included in all requests for proposals whenever the use of incremental funding is contemplated:

Incremental Funding (January 2006)

(a) It is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause entitled Limitation of Funds, as specified in FAR 52.232–22. Under the clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover the first year of performance. The Government intends to allot additional funds up to and including the full estimated cost of the contract for the remaining years of performance by contract modification. However, the Government is not obligated to reimburse the Contractor for costs incurred in excess of the periodic allotments nor is the Contractor obligated to perform in excess of the amount allotted.

(b) The Limitation of Funds clause to be included in the resultant contract, as specified in FAR 52.232–22, shall supersede the Limitation of Cost clause found in the Section I, Contract Clauses.

(End of provision)

■ 109. Revise section 352.233–70 to read as follows:

352.233–70 Litigation and claims.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Litigation and Claims (January 2006)

The Contractor shall provide written notification immediately to the Contracting Officer of any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and any claim against the Contractor the cost and expense of which is allowable under the clause entitled ''Allowable Cost and Payment.'' Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence. In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

■ 110. Revise section 352.249–14 to read as follows:

352.249–14 Excusable delays.

Insert the following clause in all solicitations and resultant contracts, other than awards made using simplified acquisition procedures:

Excusable Delays (January 2006)

(a) Except with respect to failures of subcontractors, the Contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to have failed in performance of the contract, unless: (1) The supplies or services to be furnished by the subcontractor were obtainable from other sources, (2) the Contracting Officer ordered the Contractor in writing to procure such supplies or services from such other sources, and (3) the Contractor failed to comply with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and if the Contracting Officer determines that any failure to perform was caused by circumstances beyond the control and without the fault or negligence of the Contractor, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the termination clause contained in this contract. (As used in this clause, the terms ''subcontractor'' and ''subcontractors'' mean subcontractor(s) at any tier.)

(End of clause)

■ 111. Amend section 352.270–1 by revising the introductory text of the section and paragraph (c)(3) of the Accessibility clause to read as follows:

352.270–1 Accessibility of meetings, conferences, and seminars to persons with disabilities.

Use the following clause in accordance with 370.102:

Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities (Jan 2001)

* * * * *

(c) * * *

(3) At a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For persons with hearing impairments, qualified interpreters. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For persons with vision impairments, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for persons with sensory impairments. Readers, Braille translations, large print text, and/or tape recordings are all acceptable. These materials shall be available to individuals with sensory impairments upon their arrival.

(End of clause)

* * * * *

■ 112. Amend section 352.270–2 by revising the introductory text to read as follows:

352.270–2 Indian preference.

Use the following clause as prescribed in 370.202(a):

* * * * *

■ 113. Revise section 352.270–3 to read as follows:

352.270–3 Indian preference program.

Use the following clause as prescribed in 370.202(b):

Indian Preference Program (January 2006)

(a) In addition to the requirements of the clause of this contract entitled ''Indian Preference,'' the Contractor agrees to establish and conduct an Indian preference program which will expand opportunities for Indians to receive preference for employment

and training in connection with the work to be performed under this contract, and which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts. In this connection, the Contractor shall:

(1) Designate a liaison officer who will maintain liaison with the Government and the Tribe(s) on Indian preference matters; supervise compliance with the provisions of this clause; and administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not more than twenty (20) calendar days after award of the contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed that sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. The Contractor shall give public notice of existing subcontracting opportunities and, to the extent feasible and consistent with the efficient performance of this contract, shall solicit bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including: (i) A clear description of the supplies or services required, including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) A statement indicating that preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Public Law 93–638 (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) Definitions for the terms ''Indian organization'' and ''Indian-owned economic enterprise'' as prescribed under the ''Indian Preference'' clause of this contract; (iv) A statement to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and (v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids or proposals from Indian organizations and Indian-owned economic enterprises, no responsive bid or acceptable proposal is received, the Contractor shall comply with the requirements of paragraph (d) of the ''Indian Preference'' clause of this contract. If one or more responsible bids or acceptable proposals are received, award shall be made to the low responsible bidder or acceptable offeror if the price is determined to be reasonable. If the low responsive bid or acceptable proposal is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the ''Indian Preference'' clause of this contract.

(5) Maintain written records under this contract which indicate: (i) The numbers of Indians seeking employment for each employment position available under this contract; (ii) The number and types of positions filled by Indians and non-Indians; (iii) The total number of Indians employed under this contract; (iv) For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (v) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (vi) Reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract; and (vii) The number of Indian organizations and Indian-owned economic enterprises contacted, and the number receiving subcontract awards under this contract.

(6) Submit to the Contracting Officer for approval a quarterly report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled by Indians and non-Indians, and the dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.

(7) Maintain records pursuant to this clause and keep them available for review by the Government for one year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms ''Indian,'' ''Indian Tribe,'' ''Indian Organization,'' and ''Indian-owned economic enterprise'' are defined in the clause of this contract entitled ''Indian Preference.''

(2) ''Indian reservation'' includes Indian reservations, public domain Indian Allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.)

(3) ''On or near an Indian Reservation'' means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not conflict with any Federal statutory or regulatory requirement dealing with the award and administration of contracts.

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in each subcontract awarded at any tier under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

■ 114. Amend section 352.270–4 by revising the introductory text to read as follows and by replacing the word ''permforming'' in the table with ''performing:''

352.270–4 Pricing of adjustments.

Insert the following clause in all solicitations and resultant fixed-priced contracts other than awards made using simplified acquisition procedures.

* * * * *

■ 115. Revise section 352.270–5 to read as follows:

352.270–5 Key personnel.

Insert the following clause in all solicitations and resultant contracts which require Key Personnel, regardless of the type of contract.

Key Personnel (January 2006)

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to diverting any of the specified individuals to other programs or contracts (or as soon as possible, if an individual must be replaced, for example, as a result of leaving the employ of the Contractor), the Contractor shall notify the Contracting Officer and shall submit comprehensive justification for the diversion or replacement request (including proposed substitutions for key personnel) to permit evaluation by the Government of the impact on performance under this contract. The

Contractor shall not divert or otherwise replace any key personnel without the written consent of the Contracting Officer. The Government may modify the contract to add or delete key personnel at the request of the contractor or Government.

(End of clause)

■ 116. Revise section 352.270–6 to read as follows:

352.270–6 Publications and publicity.

Insert the following clause in all solicitations and resultant contracts.

Publications and Publicity (January 2006)

(a) Unless otherwise specified in this contract and the Confidentiality of Information clause is included, the Contractor is encouraged to publish the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other publication is published, and furnish a copy of it as finally published.

(b) The Contractor shall include in any publication resulting from work performed under this contract a disclaimer reading as follows:

''The views expressed in written conference materials or publications and by speakers and moderators at HHS-sponsored conferences, do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.''

(c) Unless authorized by the Project Officer, the contractor shall not display the HHS logo on any conference materials or publications.

(End of clause)

■ 117. Revise section 352.270–7 to read as follows:

352.270–7 Paperwork Reduction Act.

Insert the following clause in all solicitations and contracts subject to the Paperwork Reduction Act requirements regarding the collection and recording of information from 10 or more persons other than Federal employees.

Paperwork Reduction Act (January 2006)

(a) This contract involves a requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is outside the scope of their employment, for use by the Federal government or disclosure to third parties; therefore, the Paperwork Reduction Act of 1995 (Pub. L. 104–13) shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB). Contractors and Project Officers should be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the HHS operating division or Office of the Secretary Reports Clearance Officer to determine the procedures for acquiring OMB clearance.

(b) The Contractor shall not expend any funds or begin any data collection until OMB Clearance is received. Once OMB Clearance is received from the Project Officer, the Contracting Officer shall provide the Contractor with written notification authorizing the expenditure of funds and the collection of data. The Contractor must allow at least 120 days for OMB clearance. Excessive delays caused by the Government which arise out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

■ 118. Revise section 352.270–8 to read as follows:

352.270–8 Protection of human subjects.

(a) Include the following provision in solicitations expected to involve human subjects:

Notice to Offerors of Requirements of 45 CFR Part 46, Protection of Human Subjects (January 2006)

(a) Copies of the Department of Health and Human Services (HHS) regulations for the protection of human subjects, 45 CFR part 46, are available from the Office for Human Research Protections (OHRP), Bethesda, Maryland 20892. The regulations provide a systematic means, based on established ethical principles, to safeguard the rights and welfare of individuals who participate as subjects in research activities supported or conducted by HHS.

(b) The regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The regulations extend to the use of human organs, tissue, and body fluids from individually identifiable human subjects as well as to graphic, written, or recorded information derived from individually identifiable human subjects. The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR part 46.

(c) Activities in which the only involvement of human subjects will be in one or more of the categories set forth in 45 CFR 46.101(b)(1–6) are exempt from coverage.

(d) Inappropriate designations of the noninvolvement of human subjects or of exempt categories of research in a project may result in delays in the review of a proposal. The OPDIV will make a final determination of whether the proposed activities are covered by the regulations or are in an exempt category, based on the information provided in the proposal. In doubtful cases, prior consultation with OHRP, (telephone: 301–496–7014), is recommended.

(e) In accordance with 45 CFR part 46, prospective Contractors being considered for award shall be required to file with OHRP an acceptable Assurance of Compliance with the regulations, specifying review procedures and assigning responsibilities for the protection of human subjects. The initial and continuing review of a research project by an institutional review board shall assure that the rights and welfare of the human subjects involved are adequately protected, that the risks to the subjects are reasonable in relation to the potential benefits, if any, to the subjects and the importance of the knowledge to be gained, and that informed consent will be obtained by methods that are adequate and appropriate. HHS regulations for the protection of human subjects (45 CFR part 46), information regarding OHRP registration and assurance requirements/processes, and OHRP contact information can be accessed at the OHRP Web site: *http://www.hhs.gov/ohrp/*.

(f) It is recommended that OHRP be consulted for advice or guidance concerning either regulatory requirements or ethical issues pertaining to research involving human subjects.

(End of provision)

(b) Include the following clause in solicitations and resultant contracts involving human subjects:

Protection of Human Subjects (January 2006)

(a) The Contractor agrees that the rights and welfare of human subjects involved in research under this contract shall be protected in accordance with 45 CFR part 46 and with the Contractor's current Assurance of Compliance on file with the Office for Human Research Protections (OHRP), Office of Public Health and Science (OPHS). The Contractor further agrees to provide certification at least annually that the Institutional Review Board has reviewed and approved the procedures, which involve human subjects in accordance with 45 CFR part 46 and the Assurance of Compliance.

(b) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract and shall ensure that work is conducted in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. Nothing in this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agent or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

(c) If at any time during the performance of this contract, the Contracting Officer determines, in consultation with the OHRP, OPHS, ASH, that the Contractor is not in compliance with any of the requirements

and/or standards stated in paragraphs (a) and (b) above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OHRP, OPHS, ASH, terminate this contract in a whole or in part, and the Contractor's name may be removed form the list of those contractors with approved Health and Human Services Human Subject Assurances.

(End of clause)

■ 119. Revise section 352.270–9 to read as follows:

352.270–9 Care of laboratory animals.

(a) Include the following provision in solicitations expected to involve vertebrate animals:

Notice to Offerors of Requirement for Compliance With the Public Health Service Policy on Humane Care and Use of Laboratory Animals (January 2006)

The PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions establishes a number of requirements for research activities involving animals. Before award may be made to an applicant organization, the organization shall file, with the Office of Laboratory Animal Welfare (OLAW), National Institutes of Health (NIH), a written Animal Welfare Assurance which commits the organization to comply with the provisions of the PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions, the Animal Welfare Act, and the Guide for the Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources. In accordance with the PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions, applicant organizations must establish a committee, qualified through the experience and expertise of its members, to oversee the institution's animal program, facilities and procedures. No award involving the use of animals shall be made unless OLAW approves the Animal Welfare Assurance. Prior to award, the Contracting Officer will notify Contractor(s) selected for projects that involve live vertebrate animals that an Animal Welfare Assurance is required. The Contracting Officer will request that OLAW negotiate an acceptable Animal Welfare Assurance with those Contractor(s). For further information, contact OLAW at NIH, Bethesda, Maryland 20892 (301–496–7163).

(End of provision)

(b) Include the following clause in all solicitations and resultant contracts involving research on vertebrate animals:

Care of Live Vertebrate Animals (January 2006)

(a) Before undertaking performance of any contract involving animal related activities, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with 7 U.S.C. 2136 and 9 CFR 2.25 through 2.28. The Contractor shall furnish evidence of the registration to the Contracting Officer.

(b) The Contractor shall acquire vertebrate animals used in research from a dealer licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR 2.1 through 2.11, or from a source that is exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of any live vertebrate animals used or intended for use in the performance of this contract will conform with the PHS Policy on Humane Care of Use of Laboratory Animals, the current Animal Welfare Assurance, the Guide for the Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources and the pertinent laws and regulations of the United States Department of Agriculture (*see* 7 U.S.C. 2131 *et seq.* and 9 CFR Subchapter A, Parts 1–4). In case of conflict between standards, the more stringent standard shall be used.

(d) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office of Laboratory Animal Welfare (OLAW), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) through (c) above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OLAW, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those contractors with approved PHS Animal Welfare Assurances.

Note: The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program may be obtained by contacting the Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737.

(End of clause)

■ 120. Add sections 352.270–10 through 352.270–19 to subpart 352.2 to read as follows:

Subpart 352.2—Texts of Provisions and Clauses

* * * * *

352.270–10 Anti-lobbying.
352.270–11 Privacy Act.
352.270–12 Pro-Children Act.
352.270–13 Tobacco-free facilities.
352.270–14 Restriction on use of human subjects.
352.270–15 Salary rate limitation.
352.270–16 Native American Graves Protection and Repatriation Act.
352.270–17 Crime Control Act—Reporting of child abuse.
352.270–18 Crime Control Act—Requirement for background checks.
352.270–19 Electronic information and technology accessibility.

Subpart 352.2—Texts of Provisions and Clauses

* * * * *

352.270–10 Anti-lobbying.

Insert the following clause in all solicitations and resultant contracts expected to exceed $100,000:

Anti-Lobbying (January 2006)

Pursuant to the current HHS annual appropriations act, except for normal and recognized executive-legislative relationships, the Contractor shall not use any HHS contract funds for (i) publicity or propaganda purposes; (ii) the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself; or (iii) payment of salary or expenses of the Contractor, or any agent acting for the Contractor, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

(End of Clause)

352.270–11 Privacy Act.

The following clause shall be used as prescribed in 324.103(a):

Privacy Act (January 2006)

This contract requires the Contractor to perform one or more of the following: (a) Design; (b) develop; or (c) operate a Federal agency system of records to accomplish an agency function in accordance with the Privacy Act of 1974 (Act) (5 U.S.C. 552a(m)(1)) and applicable agency regulations. The term ''system of records'' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Violations of the Act by the Contractor and/or its employees may result in the imposition of criminal penalties (5 U.S.C. 552a(i)). The Contractor shall ensure that each of its employees knows the prescribed rules of conduct and that each employee is aware that he/she is subject to criminal penalties for violation of the Act to the same extent as HHS employees. These provisions also apply to all subcontracts awarded under this contract which require the design,

development or operation of the designated system(s) of records (5 U.S.C. 552a(m)(1)).

The contract work statement: (a) identifies the system(s) of records and the design, development, or operation work to be performed by the Contractor; and (b) specifies the disposition to be made of such records upon completion of contract performance.

(End of clause)

352.270–12 Pro-Children Act.

Insert the following clause in all solicitations and resultant contracts and orders, regardless of dollar amount, for (i) kindergarten, elementary, or secondary education or library services or (ii) health or day care services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Pro-Children Act of 1994:

Pro-Children Act of 1994 (January 2006)

Public Law 103–227, Title X, Part C, also known as the Pro-Children Act of 1994 (Act), 20 U.S.C. 7183, imposes restrictions on smoking in facilities where certain federally funded children's services are provided. The Act prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of (i) kindergarten, elementary, or secondary education or library services or (ii) health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children's services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with the provisions of the Act.

Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

(End of clause)

352.270–13 Tobacco-free facilities.

Insert the following clause in all new solicitations and resultant contracts and orders (including construction) and all modifications resulting from the exercise of an option under a contract or order, regardless of dollar value, where some or all of the Contractor's performance, will take place on HHS properties. This clause is not required to be included if contract or order performance requires only that Contractor staff attend occasional meetings on HHS properties. In this case, Contractor employees are considered ''visitors.'' Further, for any proposed or existing construction contract or order, the Contracting Officer should coordinate any exceptions to the policy raised by an incumbent or potential Contractor based on union or collective bargaining agreements with the designated OPDIV tobacco-free policy contact point for final disposition.

Tobacco-Free Facilities (January 2006)

In accordance with Department of Health and Human Services (HHS) policy, the Contractor and its staff are prohibited from using tobacco products of any kind (e.g., cigarettes, cigars, pipes, and smokeless tobacco) while on any HHS property, including use in personal or company vehicles operated by Contractor employees while on an HHS property. This policy also applies to all subcontracts awarded under the contract or order.

The term ''HHS properties'' includes all properties owned, controlled and/or leased by HHS when totally occupied by HHS, including all indoor and outdoor areas of such properties. Where HHS only partially occupies such properties, it includes all HHS-occupied interior space. Where HHS leases space in a multi-occupant building or complex, the tobacco-free HHS policy will apply to the maximum area permitted by law and compliance with the provisions of any current lease agreements.

The Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with this policy.

(End of clause)

352.270–14 Restriction on use of human subjects.

If the Contractor has an approved Federal-wide assurance of compliance in place, but the certification that the Institutional Review Board (IRB) designated under the assurance has reviewed and approved the research cannot be completed prior to contract award because definite plans for involvement of human subjects are not set forth in the proposal (e.g., projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds), the award may be made without the requisite certification as long as the contract is appropriately conditioned. Under these conditions, insert the following clause in applicable contracts:

Restriction on Use of Human Subjects (January 2006)

Pursuant to 45 CFR part 46, *Protection of Human Research Subjects*, the Contractor shall not expend funds under this award for research involving human subjects or engage in any human subjects research activity prior to the receipt by the Contracting Officer of a certification that the research has been reviewed and approved by the Institutional Review Board (IRB) designated under the Contractor's Federal-wide assurance of compliance. This restriction applies to all collaborating sites, whether domestic or foreign, and subcontractors. The Contractor must ensure compliance by collaborators and subcontractors.

(End of clause)

352.270–15 Salary rate limitation.

Insert the following clause in all new NIH, SAMHSA, and AHRQ solicitations and resultant contracts and orders (except fixed-price completion contracts) and modifications of existing contracts for projects that support extramural activities. Projects that support extramural activities include extramural R&D, SAMHSA's mission-related requirements, and those activities commonly referred to as ''extramural R&D support.''

OR

Insert the following clause in all new NIH, SAMHSA, and AHRQ solicitations and resultant contracts (except fixed-price completion contracts) and modifications of existing contracts for extramural R&D and SAMHSA's mission-related requirements. Projects that are not considered R&D but that support extramural R&D activities (commonly referred to as ''extramural R&D support'') are OR are not included.

Salary Rate Limitation (January 2006)

Pursuant to the applicable HHS appropriations acts cited in the table below, the Contractor shall not use contract funds to pay the direct salary of an individual at a rate in excess of the salary level in effect on the date the expense is incurred as shown in the table below.

For purposes of the salary limitation, the terms ''direct salary,'' ''salary,'' and ''institutional base salary'' have the same meaning and are collectively referred to as ''direct salary'' in this clause. An individual's direct salary is the annual compensation that the Contractor pays for an individual's appointment whether that individual's time is spent on research, teaching, patient care, or other activities. Direct salary excludes any income that an individual may be permitted to earn outside of duties to the Contractor. Direct salary also excludes fringe benefits, overhead, and general and administrative expenses (also referred to as indirect costs or facilities and administrative [F&A] costs).

The salary rate limitation also applies to individuals performing under subcontracts. However, it does not apply to fees paid to consultants. If this is a multiple-year contract, it may be subject to unilateral modification by the Contracting Officer to ensure that an individual is not paid at a rate that exceeds the salary rate limitation provision established in the HHS appropriations act in effect when the expense is incurred regardless of the rate initially used to establish contract funding.

Public law	Period covered	Salary limitation (based on Executive Level I)
108–447, Div F, Title II, General Provisions, Section 204	10/01/05—12/31/05	$180,100
109–149, General Provisions, Section 204	01/01/06—until revised	$183,500

Executive Level salaries for the current and prior periods can be found at the following Web site: *http://www.opm.gov/oca/05tables/html/ex.asp.* Click on ''Salaries and Wages'' and then scroll to the bottom of the page to select the desired period.

(End of Clause)

352.270–16 Native American Graves Protection and Repatriation Act.

Insert the following clause in any solicitation and resultant contract or order that requires performance on tribal lands and all solicitations and resultant contracts or orders for construction on Federal or tribal lands, regardless of dollar amount:

Native American Graves Protection and Repatriation Act (January 2006)

Public Law 101–601, dated November 16, 1990, also known as the Native American Graves Protection and Repatriation Act (Act), imposes certain responsibilities on individuals and organizations when they discover Native American cultural items (including human remains) on Federal or tribal lands.

In the event the Contractor discovers Native American cultural items (including human remains, associated funerary objects, unassociated funerary objects, sacred objects and cultural patrimony), as defined in the Act during contract performance, the Contractor shall: (i) Immediately cease activity in the area of the discovery; (ii) notify the Contracting Officer of the discovery; and (iii) make a reasonable effort to protect the items discovered before resuming such activity. Upon receipt of the Contractor's discovery notice, the Contracting Officer will notify the appropriate authorities as required by the Act.

Unless otherwise specified by the Contracting Officer, the Contractor may resume activity in the area on the 31st calendar day following the date that the appropriate authorities certify receipt of the discovery notice. The date that the appropriate authorities certify receipt of the discovery notice and the date on which the Contractor may resume activities shall be provided to the Contractor by the Contracting Officer.

(End of clause)

352.270–17 Crime Control Act—Reporting of child abuse.

Insert the following clause in all solicitations and resultant contracts and orders, regardless of dollar amount, where performance will take place on Federal land or in a federally-operated (or contracted) facility and that involve the professions/activities performed by persons specified in the Crime Control Act of 1990, including, but not limited to, physicians, nurses, dentists, health care practitioners, optometrists, psychologists, emergency medical technicians, alcohol or drug treatment personnel, child care workers and administrators, emergency medical technicians and ambulance drivers:

Crime Control Act of 1990—Reporting of Child Abuse (January 2006)

Public Law 101–647, also known as the Crime Control Act of 1990 (Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

The Act designates ''covered professionals'' as those persons engaged in professions and activities in eight different categories including, but not limited to, physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, alcohol or drug treatment personnel, psychologists, psychiatrists, mental health professionals, child care workers and administrators, and commercial film and photo processors. The Act defines the term ''child abuse'' as the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

Accordingly, any person engaged in a covered profession or activity under an HHS contract or subcontract, regardless of the purpose of the contract or subcontract, shall immediately report a suspected child abuse incident in accordance with the provisions of the Act. If a child is suspected of being harmed, the appropriate State Child Abuse Hotline, local child protective services (CPS), or law enforcement agency should be contacted. For more information about where and how to file a report, the Childhelp USA®, National Child Abuse Hotline (1–800–4–A–CHILD®) should be called. Any covered professional failing to make a timely report of such incident shall be guilty of a Class B misdemeanor.

By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with the provisions of the Act.

(End of clause)

352.270–18 Crime Control Act—Requirement for background checks.

Insert the following clause in all solicitations and resultant contracts and orders, regardless of dollar amount, for all child care services to children under the age of 18, including social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the Crime Control Act of 1990 (Act):

Crime Control Act of 1990—Requirement for Background Checks (January 2006)

Public Law 101–647, also known as the Crime Control Act of 1990 (Act), requires that all individuals involved with the provision of child care services to children under the age of 18 undergo a criminal background check. ''Child care services'' include, but are not limited to, social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), and rehabilitative programs. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee providing any of the services listed above.

The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with the provisions of the Act.

(End of clause)

352.270–19 Electronic information and technology accessibility.

(a) The following clause shall be used in solicitations as provided in 339.201–70:

Electronic and Information Technology Accessibility (January 2006)

Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by Public Law 105–220 under Title IV (Rehabilitation Act Amendments of 1998) and the Architectural and Transportation Barriers Compliance Board Electronic and Information (EIT) Accessibility Standards (36 CFR part 1194), require that all EIT acquired must ensure that:

(1) Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities; and

(2) Members of the public with disabilities seeking information or services from an agency have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

This requirement includes the development, procurement, maintenance, and/or use of EIT products/services; therefore, any proposal submitted in response to this solicitation must demonstrate compliance with the established EIT Accessibility Standards. Information about Section 508 is available at *http://www.section508.gov/.*

(End of provision)

(b) The following clause shall be used in contracts and orders as provided in 339.201–70:

Electronic and Information Technology Accessibility (January 2006)

Pursuant to Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) as amended by Public Law 105–220 under Title IV (Rehabilitation Act Amendments of 1998), all Electronic and Information Technology (EIT) developed, procured, maintained, and/or used under this contract shall be in compliance with the ''Electronic and Information Technology Accessibility Standards'' set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the ''Access Board'') in 36 CFR part 1194. The complete text of Section 508 Final Standards can be accessed at *http://www.access-board.gov/sec508/standards.htm.*

The standards applicable to this requirement are [identified in the Statement of Work/listed below]:

(Select the appropriate phrase within the brackets [ ] and complete if necessary and identify location of/provide complete list of applicable provisions. Use the Buy accessible wizard at *http://www.buyaccessible.gov* if necessary or contact your Section 508 Coordinator)

Vendors may document conformance using [attached documentation/industry-standard Voluntary Product Accessibility Template at *http://www.itic.org/archives/articles/20040506/faq_voluntary_product_accessibility_template_vpat.php*] (select the appropriate phrase within the brackets [ ]). Vendors should provide detailed information necessary for determining compliance, including defined contractor-incidental exceptions.

(End of clause)

PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION

■ 121. Revise section 370.102 to read as follows:

370.102 Responsibilities.

(a) The Contracting Officer shall include the clause in 352.270–1 in every solicitation and resulting contract when the statement of work requires the contractor to conduct meetings, conferences, or seminars in accordance with 370.101(b).

(b) The Project Officer shall be responsible for obtaining, reviewing, and approving the contractor's plan, which is to be submitted in response to paragraph (a) of the contract clause in 352.270–1. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars will be acceptable. The Project Officer, prior to approving the plan, should consult with the OPDIV or other designated organization responsible for ensuring compliance with the Architectural Barriers Act of 1968 and the Americans with Disabilities Act of 1990 to ensure that the contractor's plan meets the accessibility requirements of the contract clause. The Project Officer shall ask the responsible organization to review, and determine the adequacy of, the contractor's plan, and respond to the Project Officer, in writing, within ten (10) working days of receiving the request from the Project Officer.

■ 122. Amend section 370.205 by revising paragraph (a) to read as follows:

370.205 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the contracting activity may supplement the clause set forth in 352.270–3 by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the contracting activity and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Public Law 93–638 and must be approved by the affected program director and approved for legal sufficiency by the General Law Division, OGC, or a regional attorney before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause in 352.270–3 shall be included in the solicitation and clearly identified in order to insure uniform understanding of the additional requirements by all prospective bidders or offerors.

* * * * *

■ 123. Revise section 370.301 to read as follows:

370.301 Policy.

It is the policy of the Department of Health and Human Services (HHS) that no contract involving human subjects shall be awarded until acceptable assurance has been given that the activity will be subject to initial and continuing review by an appropriate Institutional Review Board (IRB) as described in HHS regulations at 45 CFR 46.103. An applicable Federalwide Assurance (FWA), approved by the HHS Office of Human Research Protections (OHRP), shall be required of each contractor, subcontractor, or cooperating institution having responsibility for human subjects involved in performance of the contract. The HHS OHRP is responsible for negotiating assurances covering all HHS-supported or HHS-conducted activities involving human subjects. OHRP shall guide Contracting Officers regarding nonaward or termination of a contract due to inadequate assurance or breach of assurance for protection of human subjects.

■ 124. Revise section 370.302 to read as follows:

370.302 Types of assurances.

(a) In January 2005, OHRP announced that the FWA would be the only new type of assurance accepted for review and approval by OHRP. Institutions holding an OHRP-approved Multiple Project Assurance (MPA) or Cooperative Project Assurance (CPA) were required to submit an FWA to OHRP for approval by December 31, 2005, if the institution is required to have an OHRP-approved assurance of compliance. Any Inter-Institutional Amendment between an OHRP-approved MPA and an affiliate institution will be deactivated on January 1, 2006 if the affiliate institution has not obtained its own FWA. Single Project Assurances (SPAs) currently approved by OHRP will remain in effect for the duration of the project and through all non-competitive award renewals. An FWA listed in OHRP's current ''List of Registered Institutional Review Boards (IRBs)/Independent Ethics Committees (IECs) and Approved Assurances'' is acceptable for the purposes of this policy. The list may be found at *http://ohrp.cit.nih.gov/search/asearch.asp.*

(b) The OHRP Web site includes links to instructions and the forms for submitting both a domestic and

international FWA at *http://www.hhs.gov/ohrp/assurances/assurances_index.html*. To expedite the approval of a FWA, as well as any update/renewal, the institution shall use the OHRP Electronic Submission System. Once an electronic file is ''submitted'' to OHRP, the institution must fax or mail (do not do both) a copy of the signature page to initiate the review process. FWAs shall be mailed to the OHRP, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, or faxed to OHRP at 240–453–8202 (do not do both).

■ 125. Revise section 370.303 to read as follows:

370.303 Notice to offerors.

(a) Solicitations shall contain the notice to offerors in 352.270–8(a) whenever contract performance is expected to involve human subjects.

(b) IRB approval of proposals submitted by institutions having an OHRP-approved FWA should be certified in the manner required by instructions for completion of the contract proposal; or by completion of an OMB Form No. 0990–0263, ''Protection of Human Subjects Assurance Identification/IRB Certification/Declaration of Exemption (Common Rule); or by letter indicating the institution's OHRP-assigned FWA number, the date of IRB review and approval, and the type of review (convened or expedited). The date of IRB approval must not be more than 12 months prior to the deadline for proposal submission.

(c) FWAs for contractors, subcontractors, or cooperating institutions generally will not be requested prior to determination that a contract proposal has been selected for negotiation. When an FWA is submitted, it provides certification for the initial contract period. No additional documentation is required. If the contract provides for additional years to complete the project, the noncompetitive renewal proposal shall be certified in the manner described in the preceding paragraph.

■ 126. Revise section 370.401 to read as follows:

370.401 Policy.

(a) It is the policy of the Department of Health and Human Services (HHS) that no contract involving live vertebrate animals shall be awarded until acceptable assurance has been given that the activity will be subject to initial and continuing review by an appropriate Institutional Animal Care and Use Committee (IACUC) as described in the PHS Policy at IV.B.6. and 7. An applicable Full Animal Welfare Assurance or Interinstitutional Agreement/Assurance, approved by the Office of Laboratory Animal Welfare (OLAW), National Institutes of Health (NIH), shall be required of each contractor, subcontractor, or cooperating institution having responsibility for animal care and use involved in performance of the contract (see PHS Policy II., IV.A., and V.B.).

(b) The OLAW, NIH, is responsible for negotiating assurances covering all HHS/PHS-supported or HHS/PHS-conducted activities involving the care and use of live vertebrate animals. OLAW shall guide Contracting Officers regarding adequate animal care, and use, approval, disapproval, restriction, or withdrawal of approval of assurances (see PHS Policy V.A.).

■ 127. Revise section 370.402 to read as follows:

370.402 Assurances.

(a) Assurances may be one of two types:

(1) *Full Animal Welfare Assurance (AWA).* An AWA describes the institution's complete program for the care and use of animals, including but not limited to the facilities, occupational health, training, veterinary care, IACUC procedures and lines of authority and responsibility. An AWA listed in OLAW's list of institutions which have an approved full AWA will be considered acceptable for purposes of this policy.

(2) *Interinstitutional Agreement/Assurance (IAA).* An IAA describes the arrangements between an offeror and usually a subcontractor where animal activities will occur. An IAA is limited to the specific award or single project.

(b) The Contracting Officer shall forward copies of proposals selected for negotiation and requiring an assurance to the Assurance Branch, Office of Laboratory Animal Welfare (OLAW), NIH MSC 7507, 6100 Executive Blvd., Room 3B01, Rockville, Maryland 20892, as early as possible to secure the necessary assurances.

(c) A contractor providing animal care services at an assured entity, such as a Government-owned, contractor-operated (GOCO) site, does not need a separate assurance because the GOCO site normally covers the contractor services in the GOCO site assurance.

■ 128. Revise section 370.403 to read as follows:

370.403 Notice to offerors.

Solicitations shall contain the notice to offerors in 352.270–9(a) whenever contract performance is expected to involve the use of live vertebrate animals.

(a) For offerors having a full AWA on file with OLAW, IACUC approval of the use of animals shall be submitted in the manner required by instructions for completion of the contract proposal, but prior to the technical review of the proposal. The date of IACUC review and approval must not be more than 36 months prior to the deadline for proposal submission.

(b) Non-assured offerors are not required to submit assurances or IACUC approval with proposals. OLAW will contact contractors, subcontractors and cooperating institutions to negotiate necessary assurances and verify IACUC approvals when requested by appropriate HHS/PHS staff.

■ 129. Revise section 370.504 to read as follows:

370.504 Competition.

(a) Contracts awarded under the Buy Indian Act are subject to competition among Indians or Indian concerns to the maximum extent that the Contracting Officer determines is practicable. When competition is determined not to be practicable, a Justification for Other than Full and Open Competition shall be prepared in accordance with 306.303 and subsequently retained in the contract file.

(b) Solicitations must be synopsized and publicized in *FedBizOpps* at *http://www.fedbizopps.gov* and copies of the synopses sent to the tribal office of the Indian tribal government directly concerned with the proposed acquisition as well as to Indian concerns and others having a legitimate interest. The synopsis must state that the acquisition is restricted to Indian firms under the Buy Indian Act.

[FR Doc. E6–21505 Filed 12–19–06; 8:45 am]

BILLING CODE 4150–28–P

Federal Register

Wednesday,
December 20, 2006

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0051; FRL–8256–4]

RIN 2060–AJ78

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 14, 1999, under the authority of section 112 of the Clean Air Act (CAA), EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in the Portland cement manufacturing industry. On December 15, 2000, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded parts of the NESHAP for the Portland cement manufacturing industry to EPA to consider, among other things, setting standards based on the performance of the maximum achievable control technology (MACT) floor standards for hydrogen chloride (HCl), mercury, and total hydrocarbons (THC), and metal hazardous air pollutants (HAP).

EPA published a proposed response to the court's remand on December 2, 2005. We received over 1700 comments on the proposed response. This action promulgates EPA's final rule amendments in response to the court's remand and the comments received on the proposed amendments.

DATES: This final rule is effective on December 20, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0051. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at EPA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Research Triangle Park, NC 27711; telephone number (919) 541–5605; facsimile number (919) 541–3207; e-mail address *barnett.keith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. *Does this action apply to me?* Entities potentially affected by this action are those that manufacture Portland cement. Regulated categories and entities include:

TABLE 1.—REGULATED ENTITIES TABLE

Category	NAICS [1]	Examples of regulated entities
Industry	32731	Owners or operators of Portland cement manufacturing plants.
State	None	None.
Tribal associations	None	None.
Federal agencies	None	None.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that may potentially be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. *Judicial Review.* The NESHAP for the Portland Cement Manufacturing Industry were proposed in December 2, 2005 (70 FR 72330). This action announces EPA's final decisions on the NESHAP. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the D.C. Circuit by February 20, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final NESHAP may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

C. *How is this Document Organized?* The information presented in this preamble is organized as follows:

I. General Information
II. Background
III. Summary of the *National Lime Association* v. *EPA* Litigation
IV. EPA's Final Action in Response to the Remand
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  B. Determination of MACT for HCl Emissions
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  D. Evaluation of a Beyond-the-Floor Control Option for Non-Volatile HAP Metal Emissions
V. Other Rule Changes
VI. Responses to Major Comments
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  A. What facilities are affected by the final amendments?
  B. What are the air quality impacts?
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VIII. Statutory and Executive Order Reviews
  A. Executive Order 12866, Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Analysis
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132, Federalism
  F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Congressional Review Act

II. Background

Section 112(d) of the CAA requires EPA to set emissions standards for major stationary sources based on performance of the MACT. The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources in the category or subcategory or the best performing five sources for source categories with less than 30 sources (CAA section 112(d)(3)(A) and (B)). This level is called the MACT floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled similar source (CAA section 112(d)(3)). EPA also must consider more stringent ''beyond-the-floor'' control options. When considering beyond-the-floor options, EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy, and non-air quality health environmental impacts when doing so.

On June 14, 1999 (64 FR 31898), in accordance with these provisions, EPA published the final rule entitled ''National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry'' (40 CFR part 63, subpart LLL).[1]

The legacy public docket for the final rule is Docket No. A–92–53. The final rule provides protection to the public by requiring Portland cement manufacturing plants to meet emission standards reflecting the performance of the MACT. Specifically, the 1999 final rule established MACT-based emission limitations for particulate matter (as a surrogate for non-volatile HAP metals), dioxins/furans, and for greenfield[2] new sources, THC (as a surrogate for organic HAP). We considered, but did not establish limits for, THC for existing sources and HCl or mercury for new or existing sources. In response to the mandate of the D.C. Circuit arising from litigation summarized below in this preamble, on December 2, 2005, we proposed amendments addressing standards for these pollutants. We received over 1700 comments on the proposed amendments. Most of these comments were from the general public and addressed the lack of a mercury emission limitation in the proposed amendments. This final action reflects our consideration of these comments. We have previously amended the Portland Cement NESHAP. Consistent with the terms of a settlement agreement between the American Portland Cement Alliance and EPA, EPA adopted final amendments and certain interpretative clarifications to the rule on April 5, 2002 (76 FR 16614), July 5, 2002 (67 FR 44766), and December 6, 2002 (67 FR 72580). These amendments generally relate to the rule's applicability, and to the performance testing, and monitoring provisions of the rule. In this action, we are also amending the rule to re-insert two paragraphs relating to the applicability of the Portland cement new source performance standards that were deleted in error in a previous amendment.

It should be noted that the rule text presented in this notice includes parts of the rule that are not being amended. This is done because, in some cases, adding additional rule text reduces the possibility of errors in updating the Code of Federal Regulations.

III. Summary of the National Lime Association v. EPA Litigation

Following promulgation of the NESHAP for Portland cement manufacturing, the National Lime Association and the Sierra Club filed petitions for review of the standards in the D.C. Circuit. The American Portland Cement Alliance, although not a party to the litigation, filed a brief with the court as *amicus curiae*. The court denied essentially all of the petition of the National Lime Association, but granted part of the Sierra Club petition.

In *National Lime Association* v. *EPA*, 233 F. 3d 625 (D.C. Cir. 2000), the court upheld EPA's determination of MACT floors for particulate matter (PM) (as a surrogate for non-volatile HAP metals) and for dioxin/furan. However, the court rejected EPA's determination that it need not determine MACT floors for the remaining HAP emitted by these sources, namely, mercury, other organic HAP (for which THC are a surrogate), and HCl (233 F. 3d at 633). The court specifically rejected the argument that EPA was excused from establishing floor levels because no ''technology-based pollution control devices'' exist to control the HAP in question (*Id.* at 634). The court noted that EPA is also specifically obligated to consider other pollution-reducing measures including process changes, substitutions of materials inputs, or other modifications (*Id.*). The court remanded the rule to EPA to set MACT floor emission standards for HCl, mercury, and THC. (*Id.* At 641.)

The Sierra Club also challenged EPA's decision not to set beyond-the-floor emission limits for mercury, THC, and non-volatile HAP metals (for which PM is a surrogate). The court only addressed the absence of beyond-the-floor emission limits for non-volatile HAP metals since EPA was already being required to reconsider MACT floor emission standards for mercury, THC, and HCl, and thus, by necessity, also must consider whether to adopt beyond-the-floor standards for these HAP. The Sierra Club argued, and the court agreed, that in considering beyond-the-floor standards for non-volatile HAP metals, EPA considered cost and energy requirements but did not consider non-air quality health and environmental impacts as required by the CAA (*Id.* at 634–35). The court also found EPA's analysis of beyond-the-floor standards deficient in its assertion that there were no data to support fuel switching (switching to natural gas) as a viable option of reducing emissions of non-volatile HAP metals (*Id.* at 635).

IV. EPA's Final Action in Response to the Remand

A. Determination of MACT for Mercury Emissions

1. Floor Determinations

In developing the proposed amendments we systematically evaluated all possible means of developing a quantified floor standard for mercury emissions from these sources, including both back end technology-based pollution control devices and front end feed and fuel control. See *National Lime*, 233 F. 3d at 634 (finding that EPA had erred in examining only technological (i.e., back-end) controls in considering a level for a mercury floor). We also were unable to devise any type of work practice standard that would result in mercury emissions reductions (70 FR 72332—72335, December 2, 2005).[3]

In response to comments on the proposed standards, we have performed additional evaluations of potential floors for mercury emissions (and also performed additional evaluations of

[1] Cement kilns which burn hazardous waste are in a separate class of source, since their emissions differ from Portland cement kilns as a result of the hazardous waste inputs. Rules for hazardous waste-burning cement kilns are found at subpart EEE of part 63.

[2] A new greenfield kiln is a kiln constructed after March 24, 1998 at a site where there are no existing kilns.

[3] Indeed, most of the options EPA considered are really beyond-the-floor alternatives, because they reflect practices that differ from those now in use by any existing source (including the lowest emitters). (Coal switching, switching to natural gas, and raw material switching are examples.) In EPA's view, a purported floor standard which forces every source in a category to change its practices is a beyond-the-floor standard. Such a standard may not be adopted unless EPA takes into account costs, energy, and non-air health and environmental impacts. 70 FR 72335.

beyond-the-floor options for mercury control). We obtained additional mercury emissions test data during and after the two comment periods on the proposed amendments and once again evaluated setting a floor based on the median of the 12 percent of the kilns demonstrating the lowest mercury emissions in stack tests. We discuss each of these possibilities in turn below.

a. *Control of Mercury in Primary*[4] *Raw Materials and Fossil Fuels.* i. *Mercury Emission Levels Reflecting Raw Material and Fossil Fuel Contributions are Inherently Site-Specific.*

As stated at proposal, mercury emissions come from the predominant input to a cement kiln by volume: The limestone which is the chief raw material for the kiln.[5] Small amounts of mercury also are found in other raw material inputs to the process.[6] Fossil fuel, almost always coal, is the other source of mercury emissions. Mercury levels in limestone vary enormously, both within a single quarry and between quarries, the result being that a single source may be unable to replicate its own performance in different tests, and could not duplicate a second source's performance since a kiln lacks access to any other kiln's limestone. Mercury levels in coal likewise vary significantly, although mercury emissions due to coal are normally swamped by the emissions attributable to limestone (70 FR 72333–34).

In an attempt to quantify the potential variability, we looked to see if there were facilities with multiple stack tests for mercury. We do have multiple test results for one of the lowest mercury emitters in the data base. During the first test with the raw mill on[7] the facility was one of the lower emitting facilities in the source category demonstrating emissions of 7.8 micrograms per dry standard cubic meter (µg/dscm) (all test values are corrected to seven percent oxygen). During a second test 8 years later (reflecting raw materials from the same quarry) mercury emissions with the raw mill on were 60 µg/dscm, a variability factor of roughly 8 times. We could identify no facility operational changes between the times of the two tests that would account for this large difference in mercury emissions.

We also obtained data from a facility that was retested for mercury in July 2005, within 3 months of an initial test. With the raw mill on, mercury emissions averaged 0.00138 pounds per hour in the April test and 0.00901 pounds per hour in the July test, a variability factor of 7. With the raw mill off, emissions averaged 0.00823 pounds per hour in the April test and 0.0189 pounds per hour in the July test. We also noted that during the April test mercury emissions with the raw mill off were below mercury emissions with the raw mill on in the July test. Because it is known that when the raw mill is on the raw meal adsorbs mercury, thereby reducing measured mercury emissions in the short term, we can only assume that the uncontrolled variation in the mercury levels in the raw materials—all of which come from the same quarry—was so great between the two tests that it negated the effect of the operating condition of the raw mill.

We also assessed potential variability by examining daily variations in cement kilns' raw materials and fuel mercury contents. We obtained data from an operating facility that analyzed samples of raw material and fuel each day over a 30 day period. We calculated average daily emissions assuming all the mercury in the raw materials and fuel was emitted. The average daily emissions would vary from a low of 0.09 lb to a maximum of 16.44 lb, or a factor of 183 (See Summary of Mercury Test data in Docket 2002–0051).

These are enormous swings in variability.[8] Moreover, it is virtually certain that the variability reflected in these results fails to cabin the total raw material and emissions variability experienced by the plants in the source category, since we have only a handful of results. These data confirm our tentative conclusion at proposal that constantly changing concentrations of mercury in kiln inputs leave no reliable way to quantify that variability. 70 FR 72333.

In the proposed amendments we also evaluated requiring facilities to switch from coal to natural gas as a method to reduce mercury emissions, or requiring use of so-called clean coal (70 FR 72333–34). We tentatively concluded that this was not feasible on a national basis due to insufficient supply and lack of infrastructure, and reiterate that conclusion here. One commenter noted that petroleum coke was another fuel that is lower in mercury and is currently used as a cement kiln fuel. However, a mercury standard based on requiring fuel switching to petroleum coke suffers from the same defects as requiring facilities to switch to natural gas. This fuel may not be available in all areas of the country and there may not be sufficient availability of the fuel to replace a significant percentage of the coal burned in cement kilns. Petroleum coke is a byproduct of petroleum refining, therefore the supply is limited by the demand for refined petroleum fuels. Petroleum coke has a low volatile matter content which can lead to ignition problems if burned without a supplemental fuel. It also typically has a higher sulfur content than coal. This can adversely affect kiln refractory life and increase internal corrosion of the kiln shell. As previously noted, each individual facility has specific requirements for raw material additives based on the chemical composition of its limestone. The minerals present in the coal ash fulfill part of those requirements. Therefore, replacing part or all of the coal currently used at a facility with petroleum coke, which has almost no ash, may force the facility to incorporate additional raw material additives containing mercury to compensate for the loss of the coal ash.

Thus, we adhere to the tentative conclusion reached at proposal: front end feed and fuel control of cement kilns is inherently site specific, and basing limits on kiln performance in individual performance tests which reflect only those inputs will result in limitations that kilns can neither duplicate (another kiln's performance) nor replicate (its own).

[4] We discuss in section IV.A.1.c below floor determinations for cement kilns using secondary materials (utility fly ash) as raw materials, in place of primary materials.

[5] Limestone makes up approximately 75 percent of the mass input to the kiln. Typically the way a cement plant is sited is that a limestone quarry suitable for cement production and that is expected to provide many years of limestone is identified and the plant is built next to the quarry. There are cases where a cement plant may purchase small amounts of limestone to blend with the limestone from its quarry. However, this close proximity of the quarry and cement plant is an inherent part of the cement manufacturing process and, therefore, a cement plant does not have the flexibility to obtain the bulk of its limestone from any other source. See 70 FR 72333.

[6] Post-proposal review of available data on other mercury raw materials indicates that other feed materials also contribute some mercury, though, in most cases, less than limestone. Other raw materials include (but are not limited to): shale or clay to provide alumina; iron ore to provide iron; and sand to provide silica. These raw materials are used in lesser amounts than limestone, and a cement plant may have some flexibility in the sources of other raw materials. As noted in the preamble to the proposed amendments, there are cases where a facility made changes to their raw materials (other then limestone) to reduce mercury emissions. However, this type of control is site specific based on the available materials and the chemical composition of the limestone. The site specific factors preclude using this as a basis for a national rule (70 FR 72334).

[7] See section c. below discussing operation of the in-line raw mill and its implication for mercury control.

[8] Variability of emissions based on the operation of air pollution controls are typically lower that those shown above because air pollution controls are typically designed to meet certain percent reduction or outlet emissions levels and to account for variations in inlet conditions.

ii. *Implications of Permit Limits for Mercury.* There are currently 19 cement kilns (out of 70 cement kilns for which we reviewed permit requirements) that have permit limits for mercury. At first blush, it might be argued that these permit limits demonstrate that variability of mercury emissions can be controlled, since sources must comply with the limitations. It might further be argued that these permit limits are ''emission limitations achieved,'' the statutory basis for establishing floors for existing sources under section 112(d)(3). Likewise, for new sources, the lowest permit limit is arguably a measure of performance of the ''best controlled similar source'' (the permit itself being the means of control). We have determined, however, that for most facilities, the permit limit was established based on an estimate provided by the facility of the annual amounts of mercury that would enter the kiln with the raw materials and fuels. One facility had a mercury limit based on its estimated annual emission from an emissions test, and one facility had a limit based on a State law, although in neither case did the resulting permit cause a cement kiln source to alter or otherwise modify its existing practices to meet the limit. Thus, we find no cases where a facility actually has had to take any steps, either through the imposition of process changes or add-on controls, to reduce its mercury emissions as a result of any of these permit limits. See ''Summary of Cement Kiln Permit Data for Mercury'' in the docket.

We considered the option of setting an emissions limit, either on a pounds per year (lb/yr) or a pound per ton of clinker basis, based on the median of the top 12 percent of the 17 kilns with permit limitations. However, we repeat that none of the facilities with permit limits were required to actually take action to reduce mercury emissions. Their limits were all based on site specific factors (expected maximum conceivable levels of mercury emissions), and were set at a level that did not require the imposition of add-on controls, feed or fuel substitution, or any other constraint. Any limit we set based on these permits would require that at least some facilities apply beyond-the-floor control technology to meet the limit since feed and fuel control via substitution is not possible. Such a standard would impermissibly apply beyond-the-floor emission control without consideration of costs and other non-air health and environmental impacts.

We also considered a limit where each facility would set their own site specific limit based on the same procedures the facilities with permits used: determining in the course of the permitting process what its maximum conceivable mercury emissions are likely to be based on the facility's raw material and fuel inputs, and tacking on an additional variability factor. However, this would require that we set a separate limit for each facility, with each facility being its own subcategory (i.e. a different type of facility) based on its site specific raw materials and fuels. See 70 FR 72334, alluding to this possibility. EPA has great discretion in deciding whether or not to subcategorize within a source category. We do not believe a decision to individually subcategorize is warranted considering the fact that the result will be no discernable environmental benefit because conduct will be unaltered. *Chemical Mfr's Ass'n* v. *EPA,* 217 F. 3d 861, 866–67 (D.C. Cir. 2000) (arbitrary and capricious for EPA to impose costly regulatory obligations without some showing that the requirement furthers the CAA's environmental goals).

Therefore, we have determined that even though these permit limits exist, they have not resulted in a quantifiable reduction of mercury emissions. Any option to develop a MACT floor for mercury with these limits would either result in an unnecessarily complex rule with no environmental benefit, or a rule which improperly imposes a *de facto* beyond-the-floor standard without the required consideration of costs, energy and non-air quality impacts.

iii. *Why not Average the Performance Test Data?* Some commenters stated that EPA must simply average the results of the 12 per cent lowest mercury performance test data to establish the floor for existing sources, and establish the new source performance floor at the level of the lowest test result. We rejected this approach at proposal, and do so here, because it fails to account for the variability of mercury levels in raw materials and fuels and hence variability in performance. See 70 FR 72335; see also 70 FR 59436 (Oct. 12, 2006). We must, of course, account for sources' variability in establishing a MACT floor. *Mossville Environmental Action Now* v. *EPA,* 370 F. 3d 1232, 1241–42 (D.C. Cir. 2004). The only way all kilns, including the kilns with the lowest emission levels in individual tests, could meet this type of standard continuously, as required, would be to install backend technology-based control equipment. However, this would be a *de facto* beyond-the-floor standard, adopted impermissibly because of failure to assess cost, energy, and non-air quality health and environmental impacts. See 70 FR 72335.

We are aware that in the case of the NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (Boiler NESHAP), we used short term emissions data and applied a variability factor to determine a floor for mercury emissions (69 FR 55236, September 13, 2004). We do not believe that approach is applicable to the Portland cement source category. First, in the case of the Boiler NESHAP the floor was based on performance of a control technology, fabric filters, which means that facilities were exercising some control over mercury emissions and variability could be realistically cabined and quantified, so that an emission limit could be replicable and duplicable. Though the majority of cement kilns also use fabric filters, the collected particulate in this source category consists of product and, to some extent, unprocessed raw materials. As a result most of the collected particulate is recycled back to the process, largely negating any impact of the particulate control technology on mercury emissions.[9] Second, the variabilities seen as a result of fuel inputs in the Boiler NESHAP are much lower than the variabilities indicated in the Portland cement industry where the mercury fuel variability is a distant second to the enormous variability of mercury in the raw materials. We do not believe the data exist to accurately quantify this variability.

Another option we considered was using long term data to set a floor. However, since, to our knowledge, continuous emission monitors for mercury have not been demonstrated on cement kilns, and none currently exist on cement kilns, there is no long term stack performance data on mercury emissions from cement kilns that we could use to set a numerical emissions limit. The only available long term data of which we are aware is from several facilities which have a requirement to perform monthly analyses of composited daily samples of fuels and raw materials to calculate a 12 month mercury emissions total. However, all these kilns are located in one state (Florida) with unrepresentatively low levels of mercury in limestone (so far as we can determine). We do not believe these data would be representative of

[9] As explained in the following section of the preamble, however, EPA has determined that the floor for both existing and new sources involves the removal from the kiln system of collected particulate under designated circumstances. In addition, the floor for new sources reflects reductions in mercury based on performance of a wet scrubber.

the source category as a whole. More basically, basing a standard on one set of kilns' raw material inputs still suffers from the defect that no facility has access to another's raw materials.

b. *Floors for Facilities Using Utility Fly Ash as Raw Material.* Some cement kilns use utility fly ash as an alternative raw material to replace shale or clay.[10] These kilns replace a natural material, shale or clay, with a secondary material (i.e. a recycled air pollution control residue), fly ash. Approximately 34 cement manufacturing facilities are currently using utility boiler fly ash as a feedstock. We reviewed the available data and have come to the conclusion that cement kilns using fly ash are a different type of kiln, within the meaning of section 112 (d) (1) of CAA, and that for cement kilns currently using fly ash, the current use would be considered the MACT floor. Our reasoning is as follows.

Use of fly ash can have an effect on mercury emissions since fly ash contains mercury in varying amounts. As discussed below, mercury emissions may be higher or lower depending on the amounts of mercury involved vis-à-vis the raw materials that would otherwise be used (if available). But as also explained more fully below, some cement kilns using fly ash do not have an alternative raw material source. Given that these kilns use a different raw material, not always replaceable, and that the material affects mercury emissions, we believe that these kilns are a separate kiln type, and hence a separate subcategory, for purposes of mercury emissions. For a similar conclusion see 64 FR at 52871 (Sept. 30, 1999) (cement kilns that choose to burn hazardous waste in place of fossil fuels are a separate source category for MACT purposes).

We attempted to determine if, in general, facilities that use fly ash have higher emissions of mercury than those that do not. An analysis of data for EPA's toxic release inventory and the National Emissions Inventory did not show differences significant enough that we could draw any definitive conclusions. We considered reviewing the available mercury emissions test data to determine if we could discern a trend. However, as previously discussed, we do not believe these data are representative of long term mercury emissions. We also attempted to obtain data on the important issue of the amounts and mercury contents of fly ash used relative to other raw materials. These data apparently do not exist, with one exception discussed in the next paragraph. We do know that the two highest mercury emitting facilities (in individual performance tests) do not use fly ash. Without data on the actual mercury contributions of all materials, we do not believe we can draw any valid general conclusions on the impact of the use of fly ash on mercury emissions.

We do have detailed data from one facility that used fly ash where 50 percent of the total mercury input to the kiln is in the fly ash. However, even for this facility, we cannot accurately quantify the impact on mercury emissions of the decision to replace the shale used at this facility with fly ash because we have been unable to obtain data on the mercury content of the shale the fly ash replaced. We also have no mercury analysis data from the time period when the facility used shale.

There are other factors to consider when we evaluate the environmental effects—generally quite positive—of substituting fly ash for shale or clay. First, fly ash in general has a lower organic material content than shale or clay. At the facility just mentioned, replacing the shale with fly ash reduced emissions of THC from around 80 parts per million by volume (ppmv) to 3 ppmv. Because fly ash can reduce kiln fuel consumption, it reduces emissions of sulfur dioxide (SO_2), oxides of nitrogen (NO_X), and carbon monoxide (CO_2). Using fly ash as a kiln feed reduces the landfill requirements for disposal of utility fly ash. Use of fly ash reduces cement plant power consumption because it is usually fine enough that it can be added directly to the kiln rather then being ground in a mill. Use of fly ash also reduces fuel consumption because compared to the raw materials it typically replaces it is already highly calcined; it does not have the same types of large crystals as the raw materials it replaces (this improves burnability); some fly ashes have lower metal alkali content, thus avoiding hard burning to drive off alkali metals and reducing the need to operate the alkali bypass; it is drier than quarried materials, thus saving fuel used to dry materials. Many domestic cement plants have high pyrites in their quarry, especially in the shale or clay. In most cases, this pyrite is the main source of SO_2 emissions from the kiln. Using fly ash can significantly reduce the SO_2 emissions that result from pyrite in the raw materials. It also reduces the energy required for the quarring, milling, and transporting of the shale or clay prior to its use as a feedstock, as well as the associated air emissions.

It should also be noted that there are at least two new facilities whose permits specifically require use of fly ash as their alumina source, as they have no source for shale or clay, the primary material alternatives for alumina. Finally, a facility that currently uses fly ash may not be able to return to using the natural (i.e. primary) raw materials it replaced. For example, if the replaced raw materials were shale, the shale quarry may now be closed and the facility may not have access to a suitable shale supply.

Given the lack of any data to positively state the impact of fly ash on mercury emissions for the source category in general, as well as the positive environmental effects of using fly ash, there is no basis for a floor standard based on substituting other potential raw materials (such as shale or clay) for fly ash. At the same time, we do not see any means of identifying a floor for existing fly ash users based on substituting different fly ash types reflecting different mercury content. The recycled fly ash is not fungible. Cement kilns must carefully select only fly ash with needed properties within a relatively small tolerance. Cement kilns also usually are limited to fly ash available from boilers which are reasonably close to the kiln (typically within a few hundred miles) or shipping expense becomes prohibitive. The fly ash selection process is involved; it has taken years for kilns to identify a suitable fly ash source. Accordingly, we evaluate fly ash like the other raw material inputs into cement kilns, and do not believe that a floor that is based on substitution of either raw materials or other fly ash is justified because the input is variable and uncontrollable. We discuss in section IV.A.2 below the one exception to this conclusion for fly ash where the mercury content has been artificially increased by sorbent injection.

c. *Control of Collected Particulate (Cement Kiln Dust).* There are two operation factors that impact measured mercury emissions at the kiln stack. These are the use of in-line raw mills and the recycling of cement kiln dust (CKD).

Many (but not all) kiln systems have in-line raw mills. In these systems the kiln exhaust gas is routed through the raw mill to dry the raw materials. This process results in mercury contained in the flue gas being adsorbed by the raw meal.[11] This results in an apparent

[10] Though these are also raw materials inputs, the mass of clay or shale is typically less than 15 percent of the mass input to the kiln. Limestone makes up approximately 80 percent of the mass input.

[11] More specifically, when the mill is on-line, the kiln gas containing volatilized mercury is used to

reduction if mercury emissions are being measured at the kiln stack. However, the captured mercury is reintroduced into the kiln which creates a recycle loop of mercury until the captured mercury eventually escapes and is emitted to the atmosphere. Also, raw mills do not run continuously. When the raw mill is turned off, this effect of raw meal adsorption of mercury is negated and mercury emissions appear to increase. However, the increase is actually mercury that would have previously been emitted but was captured by the raw meal and returned to the kiln. The net effect is that an in-line raw mill does not increase or reduce mercury emissions over the long term; it simply alters the time at which the mercury is released.

Mercury is also adsorbed on the CKD collected in the particulate control device, typically a fabric filter or an electrostatic precipitators (ESP). Because the collected CKD mainly consists of product, and sometimes small amounts of raw materials, the collected CKD is recycled back to the kiln to the extent possible. The portion that cannot be recycled to the kiln is either sent to a landfill, or used in some other manner (i.e. some type of beneficial use). Most facilities require that a portion of the CKD be removed from the kiln system rather than returned to the kiln. This is done to bleed the kiln system of alkali materials that build up as they circulate which would otherwise contaminate product and damage the kiln lining. This practice necessarily reduces the overall volume of mercury emitted by cement kilns, as noted by several commenters, since the entrained mercury in the CKD is no longer available for release from the kiln. The amount of reduction is kiln-specific, based on the level of alkali materials in the kiln's raw materials and required product specifications, and therefore not quantifiable on a national basis. Nor would kiln-by-kiln site-specific emission standards be warranted, for the same reasons that site-specific limits based on mercury levels on raw material and fuel inputs are not justified. EPA is instead determining that a floor standard for both existing and new sources is the work practice that cement kiln dust be removed from the kiln system at the point that recirculation causes adverse effect on product.

d. *Standards Based on Performance of Wet Scrubbers.* There are at least five cement kilns that have limestone (wet) scrubbers installed for control of SO_2. Commenters noted that based on experience with utility boilers, and other similar combustion devices, there is reason to expect that the scrubbers installed on cement kilns also remove oxidized mercury.

To our knowledge, we obtained all the available data on wet scrubber controlled facilities after the comment period on the proposed amendments. This consists of data from 2004 and 2005 tests at two facilities measured exclusively at the scrubber outlet. These data range from 0.42 to 30 μg/dscm. Variability of mercury emissions at the scrubber-equipped kilns for which we have multiple test data differs by orders of magnitude. These data fall within the range of test data from all kilns (those with wet scrubbers and those without wet scrubbers). We have no test data for mercury measured at the scrubber inlet. As a result, we cannot, on the basis of the current data, determine with absolute certainty (though we believe it is reasonably certain) if the outlet mercury emissions from the wet scrubber equipped kilns are a result of mercury removal by the scrubber, or simply reflect the amounts of mercury in the raw materials. We now discuss the implications of this information for purposes of existing and new source floors. Note that the following discussion assumes the scrubbers remove oxidized mercury for reasons discussed below.

First, there are an insufficient number of wet-scrubber equipped kilns on which to base an existing source floor. The scrubber-equipped kilns would represent the best performing sources since data from other kilns simply reflect the mercury levels in kiln inputs on the day of the test. There are 158 operating kilns, and the information available to us indicates that only five of them are equipped with wet scrubbers. The median kiln of the top 12 percent would, therefore, not be a scrubber equipped kiln.[12]

However, for new sources mercury emissions would not be uncontrolled—solely dependent on raw material mercury content—but rather would reflect performance of ''the best controlled similar source'' (section 112 (d)(3)). A kiln so-equipped would thus have the best performance over time, since variability in mercury attributable to raw material and fuel inputs would be controlled in part.[13]

We believe there is a reasonable basis that wet scrubbers remove oxidized mercury from cement kiln emissions. First, wet scrubbers are known to remove oxidized mercury in most combustion applications though removal rates vary. We have speciated mercury test data on two kilns that indicate that there is a significant amount of oxidized mercury in at least some cement kilns. See mercury emission test data for Holcim, Dundee, MI and Lafarge, Alpena, MI, in docket EPA–HQ–OAR–2002–0051. Second, the limited data we have from cement kilns equipped with wet scrubbers is among the lowest end-of-stack mercury data in our data base (although not the lowest), which could indicate that some removal mechanism is involved. An important caveat, however, is that these data are exclusively end-of-stack, without paired inlet concentrations. These data thus do not with absolute certainty demonstrate that mercury removal is occurring or how much.

We estimated the performance of the best performing scrubber, and hence the new source MACT floor, to be 41 μg/dscm (corrected to 7 percent oxygen) using the following rationale. First, we limited the analysis to data from wet scrubber equipped kilns because, as just

sweep the mill of the finely ground raw feed particles. Since the mill temperature is only about 90 to 120 °C during this operational mode, the fine PM can adsorb the mercury in the gas stream, and the particles containing condensed mercury are stored in the raw feed silos. This stored raw mix then is fed to the kiln. The captured mercury is again volatilized and returned in the gas stream to the raw mill, only to be captured again in the raw mill, as described above. This process continues as long as the raw mill is on-line, and the raw feed continues to adsorb additional mercury through this process.

[12] Choosing the median source for assessing an existing source floor here is a reasonable manner of determining ''the average emission limitation achieved by the best performing 12 percent of existing sources'' (section 112 (d)(3)). Not only can the statutory term ''average'' be reasonably interpreted to mean median, but it is appropriate to do so here in order not to adopt a *de facto* beyond the floor standard. If one were simply to combine the mercury emission levels of the kilns equipped with wet scrubbers with other kilns whose mercury levels reflect raw material and fuel mercury levels at the time of the performance test, the resulting limit would not be achievable over time by any source other than one with a wet scrubber. Ostensible best performers would consequently have to retrofit with back end control, since otherwise they could not consistently achieve the results of their own performance tests.

[13] That is, variability would no longer be purely a function of the happenstance of the amount of mercury in raw materials (and fossil fuels) used in the test condition. As explained more fully below, performance of wet scrubbers, however, is variable, based not only on operation of the device but on mercury levels in input materials. Wet scrubbers on utility boilers, for example, are documented to remove between 0 to 72 percent of incoming mercury. See Control of Mercury Emissions from Coal-Fired Electric Utility Boilers: Interim Report Including Errata available at *http://www.epa.gov/nrmrl/pubs/600r01109/600r01109.htm*. We should note, however, that because utility boilers do not have the significant levels of alkaline materials that are present in cement kilns, which alkaline materials would impede mercury oxidation and scrubber efficacy, we do not view utility boilers as a ''similar source'' for purposes of section 112(d)(1).

discussed, the wet scrubber equipped kilns represent the best performing sources, regardless of their actual outlet emissions levels in individual performance tests. Second, we ranked all the wet scrubber mercury emissions with the raw mill off. We believe this is appropriate because the condition of raw mill off represents a normal operating mode for a cement kiln (albeit the operating mode when mercury emissions would be highest, as discussed above in section a.i). We then took the mean raw mill off value for mercury emissions from a cement kiln in our (limited) data base, and added to it a variability factor to account for normal variation in emissions. This variability factor is the standard deviation of the data multiplied by 2.326 (the z statistic) to produce the 99th confidence interval. We looked to all of the data, rather than to the data from the single lowest emitting kiln, because there are too few data points from that kiln (or from any one kiln) to estimate that kiln's variability. Given that variability is known to occur, we believe that this is the best approximation of variability of the best performing kiln presently available.

The result of this analysis is a new source floor of 41 µg/dscm that must be met continuously (raw mill on and raw mill off) (see further discussion in section A.3 below). This is an emissions limit that we believe will not be exceeded 99 percent of the time by the best performing kiln whose performance is used to set the standard.

Because of the limited performance data characterizing performance of the lowest-emitting scrubber-equipped kiln, the rule also contains an alternative new source mercury floor. The best performing kiln is equipped with a wet scrubber, although there could be questions about its performance over time. Therefore, if a new source installs a properly designed and operated wet scrubber, and is unable to achieve the 41 µg/dscm standard, then whatever emission level the source achieves (over time, considering all normal sources of variability) would become the floor for that source. Based on the design of the wet scrubber that is the basis of the new source floor, this would be a packed bed or spray tower wet scrubber with a minimum liquid-to-gas ratio of 30 gallons per thousand cubic feet of exhaust gas.

In sum, we conclude that floors for mercury for all existing cement kilns should be to remove accumulated mercury-containing cement kiln dust from the system at the point product quality is adversely affected. The floor for new sources is to utilize this same work practice, and in addition, to meet a standard of either 41 µg/dscm or a site-specific limit based on performance of a properly designed and operated wet scrubber.

As just explained, the mercury data on which the new source floor is based are not only limited, but fails to definitively answer the critical question of whether wet scrubbers are removing oxidized mercury, and, if so, to what extent. We are taking immediate steps to address this issue and augment the data base. In an action published elsewhere in this **Federal Register**, we are granting reconsideration of the new source standard adopted in this rule, both due to substantive issues relating to performance of wet scrubbers and because information about their performance in this industry has not been available for public comment. We also have initiated actions to obtain inlet and outlet test data for cement kilns equipped with wet scrubbers in order to determine if these controls remove mercury, and to what extent. In addition, we are committing to completing this reconsideration process within one year from December 20, 2006.

2. Beyond-the-Floor Determinations

During development of the original NESHAP for Portland cement manufacturing, we conducted MACT floor and beyond-the-floor analyses for kiln and in-line kiln/raw mill mercury emissions (63 FR 14182, March 24, 1998 and 64 FR 31898, June 14, 1999). We also conducted a beyond-the-floor analysis for mercury, based on the performance of activated carbon injection with an additional PM control device. Costs for the system would include the cost of the carbon injection system and an additional fabric filter (FF) to collect the carbon separately from the CKD. Based on the low levels of mercury emissions from individual Portland cement kilns, as well as the high cost per ton of mercury removed by the carbon injection/FF system, we determined that this beyond-the-floor option was not justified (63 FR 14202, March 24, 1998).

At proposal, EPA again concluded tentatively that a beyond the floor standard based on performance of activated carbon is not justified (70 FR 72335). We have since reevaluated beyond-the-floor control options for mercury emissions. This evaluation included both process changes and add-on control technology.

There are two potential feasible process changes that have the potential to affect mercury emissions. These are removing CKD from the kiln system and, for the subcategory of kilns that currently use fly ash as a raw material, replacing the fly ash with a lower mercury raw material. Substituting raw materials or fossil fuels with lower-mercury inputs could in theory reduce mercury emissions, but this alternative is infeasible for the reasons explained at 70 FR 72333–72334.

Generally, once mercury enters a kiln system, it has five potential fates: it may remain unchanged and become part of the final product; it may react with raw materials and exit the kiln in the clinker; it may vaporize in the high temperature of the kiln and/or preheater; it may condense or react with the cement kiln dust and be removed from the system; or it may exit the kiln system in vapor form or be adsorbed to a dust particle through the stack. In general, mercury in the fuel becomes volatilized near the kiln's combustion zone and is carried toward the feed end of the system along with combustion gases. Some of the mercury compounds pass through the entire system and exit in vapor phase through a stack. However, as the flue gas cools, some mercury may adsorb/condense onto dust particles in the cooler regions of the kiln system. Much of this dust containing condensed mercury would then be captured by the PM control device and for most kiln systems, returned to the kiln.

We evaluated, requiring a facility to further reduce the recycling of CKD beyond the wastage already needed to protect product quality, the floor for both existing and new sources. For a 600,000 tpy (tpy) kiln the estimated total annual cost would be $3.7 million just for replacement of CKD (which is actually product) and disposal of additional solid waste. This cost does not account for the increased raw materials costs and energy costs associated with reducing the recycling of the CKD. The mercury emissions reduction would range from 0.012 to 0.055 tpy based on assumed CKD mercury concentrations of 0.33 and 1.53 parts per million (ppm) respectively. The cost per ton of mercury reduction would range from $67 million to $308 million. See Costs and Impacts of Wasting Cement Kiln Dust or Replacing Fly Ash to Reduce Mercury Emissions in docket EPA–HQ–OAR–2002–0051. We note that the median value for the mercury content of recycled CKD for one study was only 0.053 ppm. See the report Mercury and Lead Content in Raw Materials in docket EPA–HQ–OAR–2002–0051. This would indicate that for the majority of the facilities the costs per ton would be even higher that those presented above. In addition, we

estimate that wasting 50 percent of the recycled CKD would reduce the energy efficiency of the process by six percent due to the need to process and calcine additional feed to replace the wasted CKD. It is possible that in some cases the wasted cement kiln dust could be mixed with the cement product rather than landfilled, or that some other beneficial use could be found. This would reduce the costs and non-air adverse impacts of this option. However, there are currently barriers to directly mixing CKD with clinker due to product quality and product specification issues. We do not have data available to evaluate the potential for beneficial use of the CKD. Based on these costs, the adverse energy impacts, and the increased adverse waste disposal impacts (see 64 FR 45632, 45635–36 (Aug. 20, 1999) for examples of potential hazards to human health and the environment posed by disposal of cement kiln dust), we do not believe this beyond-the-floor option is justified and therefore are not selecting it.

As previously noted, for the subcategory of facilities that use utility boiler fly ash as a kiln feed we determined that the current use represented the MACT floor. We considered two beyond-the-floor options for this subcategory. One option was to ban the use of any fly ash if it resulted in a mercury emissions increase over a raw material baseline, and the second was to only ban the use of fly ash whose mercury content had been artificially increased through the use of a sorbent to capture mercury in the utility boiler flue gas.

If we were to ban the use of utility boiler fly ash for any case where it has been shown to increase mercury emissions from the kiln over a raw material baseline, facilities would have to revert to using their previous raw materials, or to find alternative raw materials that provide the same chemical constituents as the fly ash. As previously noted, if a facility replaces their shale or clay with fly ash, the quarry for that material may now be closed and it may not be possible to cost-effectively obtain the previously used raw materials. And for at least two new facilities, the original raw materials used at startup will include fly ash, so there is no previously used material with which to compare the mercury content of the fly ash. Due to the site specific costs associated with raw materials, we don't have any data to calculate the costs of the beyond-the-floor option for the industry as a whole. In one example, we estimated the cost as approximately $136 million per ton of mercury reduction. See Costs and Impacts of Wasting Cement Kiln Dust or Replacing Fly Ash to Reduce Mercury Emissions in docket EPA–HQ–OAR–2002–0051. Also, this option would mean that all the fly ash currently being used as a cement kiln feed would now potentially have to be landfilled. This would generate an additional 3 million tpy of solid waste, with potential adverse health and environmental impacts associated with management of these wastes. There would also be adverse environmental air and non-air quality health and environmental impacts associated with the mining of additional raw materials that would have to be utilized. In addition, the overall kiln efficiencies (i.e. the amount of fuel required per ton of clinker produced) at the facilities using fly ash would be expected to decrease if the fly ash were replaced with shale or clay. This decrease may be as large as 10 percent (See Site Visit to Lafarge Cement in Alpena Michigan in the docket).

Based on the cost, energy, and adverse non-air quality health and environmental impacts, we believe that banning the current use of utility boiler fly ash is not justified.

We also separately evaluated the use of fly ash from a utility boiler where activated carbon, or some other type of sorbent injection, has been used to collect mercury. This practice does not currently occur. See 70 FR 72344 (voicing concern about potential for increased mercury emissions from cement kilns were such fly ash to be used). The mercury concentration in this type of fly ash will vary widely. However, full scale testing of fly ash from utility boilers using various sorbent injection processes has indicated there is a potential for sorbent injection to significantly increase fly ash mercury content (Characterization of Mercury-Enriched Coal Combustion Residues from Electric Utilities Using Enhanced Sorbents for Mercury Control in the docket EPA–HQ–OAR–2002–0051). Testing to date has shown increases by a factor of 2 to 10, and in one case of a very low mercury fly ash the increase was by a factor of 70.

Data from 16 cement facilities currently using fly ash not reflecting sorbed mercury showed mercury concentrations in the fly ash from 0.002 ppm to 0.685 ppm with a median of 0.136 ppm. Data on the fly ash mercury content of currently operating utility boilers testing sorbent injection showed levels ranging from 0.071 ppm up to 1.529 ppm with a median level of 1.156 ppm, significantly higher than the fly ash currently in use. Therefore, we see a potential for fly ash with enhanced mercury content due to sorbent injection at the utility site to increase mercury emissions from cement kilns, and for the increase to be much more significant than emissions attributable to the current fly ash being used.

We do not see a ban on the use of this type of fly ash as significantly affecting the overall current beneficial uses of fly ash. First, we do not anticipate the widespread use of activated carbon injection ACI in the utility industry until 2010 or later. Therefore, both the cement industry and the utility industry will have a significant amount of time to adjust to this requirement. Second, a utility boiler that decides to apply ACI for mercury control has the option of collecting the fly ash from sorbent injection systems separately from the rest of the facility's fly ash (e.g., EPRI'S TOXECON system). Therefore, the utility boiler could continue to supply non-sorbent fly ash to a cement kiln even after the application of ACI for mercury control. Finally, technology is being developed that would allow the mineral-rich portion of fly ash to be separated from the high carbon/high mercury portion.

Based on these factors, we are banning the use of utility boiler fly ash in cement kilns where the fly ash mercury content has been increased through the use of activated carbon or any other sorbent unless the facility can demonstrate that the use of that fly ash will not result in an increase in mercury emissions over baseline emissions (i.e., emissions not using the mercury increased fly ash). The facility has the burden of proving there has been no emissions increase over baseline. This requirement, adopted as a beyond-the-floor control, applies to both existing and new sources.

We also reevaluated our analysis of potential control options based on add-on control technology. These were control options based on the use of a limestone scrubber, and ACI.

As previously noted there are at least five cement kilns that have limestone (wet) scrubbers. As discussed in section IV.A.1.d above, there is a reasonable basis for believing that the wet scrubbers remove the oxidized mercury. There are no data available to allow us to definitively estimate the percent reduction expected. We performed a cost analysis based on an assumed mercury removal efficiency of 42 percent, which is transferred (solely for purposes of analysis) [14] from

[14] As explained in section 1.d, there are no data to definitively state that the percent reduction achieved by wet scrubbers in the utility industry are

Continued

performance of wet scrubbers in the utility boiler category and represents the greatest degree of removal one could expect to be consistently achieved for Portland cement kilns. We also note that the wet scrubber will achieve cobenefits of reducing SO_2 and dioxins (although dioxin removal would be relatively modest since any removal would be incremental to that required by the existing MACT dioxin standard for Portland cement kilns). The results of that analysis for an existing model large kiln are as follows:

TABLE 1.—PACKED BED SCRUBBER—COSTS AND EMISSION REDUCTIONS

Clinker production in tpy (tpy)	Total annualized cost ($/yr)	Emissions reduction		
		SO_2 (tpy)	D/F (g/yr)	Hg (lb/yr)
600,000	1,542,000	297	0.11	16.8–147

Based on this analysis the cost per ton of mercury removed ranges from $21 million per ton to $184 million per ton, a result that is not at all cost effective. In addition, a wet scrubber for a large kiln will generate approximately 45,500 tpy of solid waste and require approximately 980,000 kilowatt hour per year (kWhr/year) of electricity.

Based on the significant cost impacts per ton of emission reduction, and the adverse energy and solid waste impacts, and the uncertainty of the actual mercury emission reductions, we do not consider this control option to be reasonable for existing sources.

At proposal, EPA discussed and rejected a beyond-the-floor option based on the use of activated carbon injection. See 70 FR 72335. Commenters noted that our costs for ACI had not been updated from the costs calculated in development of the original NESHAP. In response, we have now updated our ACI costs based on more recent information. The total annualized costs for a large new or existing kiln ranges from $510,000 to $676,000 per year. Assuming an 80 percent reduction in mercury emissions, the cost per ton of mercury removal ranged from $4 million to $42 million per ton for existing kilns. The wide range in cost per ton of removal is mainly influenced by the baseline mercury emissions. Based on the wide variation we have seen in actual mercury emissions in this source category, the actual cost per ton would also vary widely from site to site as shown above.

We also evaluated a beyond-the-floor option for new kilns based on combining ACI and a wet scrubber. The incremental cost of ACI in this application is $9 to $89 million per ton of mercury removed, which we regard as a very high cost.

Our cost estimates assumed 80 percent emissions reduction for mercury. Though we are reasonably certain that ACI will remove mercury from cement kiln exhaust gas, we have no data on the actual expected removal efficiency. Data are available for one emissions test on a cement kiln burning hazardous waste. In this test the mercury removal efficiency averaged 89 percent removal. However, the inlet mercury concentration during the test varied from 65 to 267 µg/dscm. A review of the data for the individual test runs implies that the percent reduction decreases as the inlet concentration decreases. Almost all the non-hazardous waste cement kilns tested had mercury concentrations well below 65 µg/dscm. Therefore, the long term performance of ACI on mercury emissions from cement kilns is very uncertain. We also note that the application of ACI to a cement kiln (either alone or in combination with a wet scrubber) will generate approximately 1,600 tpy of solid waste for a new or existing large kiln. Recycling of the waste would be unlikely due to the toxics content.

For existing sources we rejected a control option based on the performance of ACI due to the significant cost per ton of mercury removed, increased energy use, and the adverse non-air quality health and environmental impacts (in the form of additional mercury and organic-laden waste generated). For new sources we rejected the option based on the performance of ACI combined with a wet scrubber for essentially the same reasons: significant cost per ton of mercury removed, increased energy use and adverse non-air quality health and environmental impacts. For both new and existing sources we also rejected this control option due to the uncertainty of the actual performance levels achieved, which leads to uncertainty of the actual cost per ton of mercury emissions reduction. We also note that the application of ACI potentially could result in a THC emission reduction of up to 117 tpy per kiln, though in most cases the reduction would be approximately 30 tpy or less. This THC emissions reduction is based on an assumed control efficiency of 50 percent. We do not see these small THC emission reductions (of which organic HAP are a small subset) to be a reason to alter our tentative decision at proposal that a standard based on performance of ACI is not justified as a beyond-the-floor control option.

Finally, for greenfield new sources (sources being newly built at a site without other cement kilns), we considered the option of requiring such a kiln to be sited at a low-mercury quarry. This concept has intuitive appeal: such a new kiln is not tied to an existing source of limestone, and so can choose where to be sited. The difficulty is in quantifying this type of standard. We cannot presently quantify what 'high mercury quarry' or 'low mercury quarry' means, and cannot responsibly select an arbitrary number that might make it impossible to build a new cement kiln in major parts of the country.

3. Conclusion

In sum, we conclude that the standards for mercury for all existing cement kilns are to remove accumulated mercury-containing cement kiln dust from the system at the point product quality is adversely affected. The standard for new sources is to utilize this same work practice, and in addition, to meet a standard of either 41 µg/dscm or a site-specific limit based on performance of a properly designed and operated wet scrubber.

In addition, we are banning the use of utility boiler fly ash in cement kilns where the fly ash mercury content has been increased through the use of activated carbon or any other sorbent unless the facility can demonstrate that the use of that fly ash will not result in an increase in mercury emissions over baseline emissions (i.e., emissions not using the mercury increased fly ash).

representatie of the percent reduction in the Portland cement source category. We used this figure in beyond-the-floor analyses as an upper bound best case for potential emission reductions.

Because the final standard is more stringent than the standard EPA proposed, the compliance date for sources which commenced construction after December 2, 2005, and before promulgation of this final rule is three years from December 20, 2006. See section 112(i)(2). New sources that commence construction after the date of promulgation of today's action must comply with the final rule upon start-up. However, as we are reconsidering the new source mercury standard and plan to take final action on that reconsideration in no more than a year and as construction of a new kiln generally takes at least 20–24 months, it is unlikely that any new source will be subject to the standard before completion of reconsideration.

We are also requiring that new sources demonstrate compliance by doing mercury emission testing with the raw mill off and with the raw mill on. The reason to test under both conditions is that (as explained in section A.1.c above) one other operation factor besides wet scrubber performance affecting emissions is the recycling of CKD. A facility could cut off CKD recycling for purposes of meeting the emission limit during testing with raw mill off, and then start recycling after the test which could result in the emissions limit being exceeded. We could simply limit CKD recycling to the level during the raw mill off test, but we believe this would potentially and needlessly restrict the ability of a facility to recycle CKD during raw mill on operation. During the test under each condition, the facility must record the amount of CKD recycle. The amount of CKD recycle becomes an operating limit not to be exceeded.

The limit for new sources adopted here also applies to both area and major new sources. We have applied this limit to area sources consistent with section 112(c)(6).

For facilities that elect to meet mercury emissions limits using ACI, we are incorporating the operating and monitoring requirements for ACI that are applicable when ACI is used for dioxin control.

B. Determination of MACT for HCl Emissions

In developing the 1999 Portland Cement NESHAP we concluded that no add-on air pollution controls were being used whose performance could be used as a basis for the MACT floor for existing Portland cement plants. For new source MACT, we identified two kilns that were using alkaline scrubbers for the control of SO2 emissions. But we concluded that because these devices were operated only intermittently, their performance could not be used as a basis for the MACT floor for new sources. Alkaline scrubbers were then considered for beyond-the-floor controls. Using engineering assessments from similar technology operated on municipal waste combustors and medical waste incinerators, we estimated costs and emissions reductions. Based on the costs of control and emissions reductions that would be achieved, we determined that beyond-the-floor controls were not warranted (63 FR 14203, March 24, 1998).

In the proposed amendments, we reexamined establishing a floor for control of HCl emissions from new Portland cement sources. Since promulgation of the NESHAP, wet scrubbers have been installed and are operating at a minimum of five Portland cement plants. See section IV.A.1.d above. For the reasons described above, this is an insufficient number of scrubbers on which to base an existing source floor for this category (id.). We did, however, propose to base the floor for new sources on the performance of continuously operated alkaline scrubbers, and proposed emissions levels of 15 ppmv at the control device outlet, or a 90 percent HCl emissions reduction measured across the scrubber, as the new source floor.

We also reexamined the MACT floor for existing sources. The only potential controls identified as a floor option was the operation of the kiln and PM control device themselves. Because the kiln and PM control system contain large amounts of alkaline CKD, the kilns themselves remove a significant amount of HCl (which reacts with the CKD and is captured as particulate). See 70 FR 72337 and 69 FR 21259 (April 20, 2004). We proposed as a floor the operation of the kiln and PM control as a work practice standard.

We also evaluated requiring the use of an alkaline scrubber as a beyond-the-floor control option for existing sources. We found that the costs and non-air quality health and environmental impacts were not reasonable for the emissions reductions achieved.

We also solicited comment on adopting alternative risk-based emission standards for HCl pursuant to section 112(d)(4) of the CAA (70 FR 72337). We suggested two possible approaches for establishing such standards. Under the first approach an alternative risk-based standard would be based on national exposure standards determined by EPA to ensure protection of public health with an ample margin of safety, and to be protective of the environment. For reasons discussed below we have decided to adopt this approach. Under the second approach, which we are not adopting, site specific risk analyses would be used to establish standards on a case-by case basis.

After careful consideration of the comments on the proposed amendments, we are not requiring control of HCl emissions from cement kilns under section 112(d). Under the authority of section 112(d)(4) of the CAA, we have determined that no further control is necessary because HCl is a ''health threshold pollutant,'' and human health is protected with an ample margin of safety at current HCl emission levels. The following explains the statutory basis for considering health thresholds when establishing standards and the basis for today's decision, including a discussion of the risk assessment conducted to support the decision.

Section 112 of the CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Of relevance here, section 112(d)(4) allows us to develop risk-based standards for HAP ''for which a health threshold has been established'' provided that the standards achieve an ''ample margin of safety.'' Therefore, we believe we have the discretion under section 112(d)(4) to develop standards which may be less stringent than the corresponding technology-based MACT standards for threshold hazardous air pollutants emitted by some source categories. See 67 FR 78054, December 20, 2002 and 63 FR 18765, April 15, 1998.

In evaluating potential standards for HCl for this source category, we seek to assure that emissions from every source in the category result in exposures not causing adverse effects, with an ample margin of safety, even for an individual exposed at the upper end of the exposure distribution. The upper end of the exposure distribution is calculated using the ''high end exposure estimate,'' defined as a plausible estimate of individual exposure for those persons at the upper end of the exposure distribution, conceptually above the 90th percentile, but not higher than the individual in the population who has the highest exposure. We believe that assuring protection to persons at the upper end of the exposure distribution is consistent with the ''ample margin of safety'' requirement in section 112(d)(4).

Our decision not to develop standards for HCl from cement kilns is based on the following. First, we consider HCl to be a threshold pollutant. See 63 FR 18767, 67 FR 78054, and 70 FR 59407, October 12, 2005. Second, we have defined threshold values for HCl in the

form of an Inhalation Reference Concentration (RfC) and acute exposure guideline level (AEGL). Third, HCl is emitted from cement kilns in quantities that result in human exposure in the ambient air at levels well below these threshold values with an ample margin of safety. Finally, there are no adverse environmental effects associated with HCl emissions from cement kilns. The bases and supporting rationale for these conclusions are as follows.

For the purposes of section 112(d)(4), several factors are considered in our decision on whether a pollutant should be categorized as a health threshold pollutant. These factors include evidence and classification of carcinogenic risk and evidence of noncarcinogenic effects. For a detailed discussion of factors that we consider in deciding whether a pollutant should be categorized as a health threshold pollutant, please see the April 15, 1998, **Federal Register** document (63 FR 18766). In the April 15, 1998, action cited above, we determined that HCl, a Group D pollutant, is a health threshold pollutant for the purpose of section 112(d)(4) of the CAA (63 FR 18753).

The Portland Cement Association (PCA) conducted a risk assessment to determine whether the emissions of HCl from cement kilns at the current baseline levels resulted in exposures below the threshold values for HCl. We reviewed the risk assessment report prepared by the PCA and believe that it uses a reasonable and conservative methodology, is consistent with EPA methodology and practice, and reaches a reasonable conclusion that current levels of HCl emissions from cement kilns would be well under the threshold level of concern even for assumed worst-case human receptors.

The PCA analysis evaluated long-term and short-term ambient air concentrations resulting from emissions of HCl from Portland cement kilns in order to quantify potential non-cancer risks associated with such emissions, as well as to characterize potential ecological effects of those emissions. The approach is based on the USEPA guidance document entitled ''A Tiered Modeling Approach for Assessing the Risks Due to Sources of Hazardous Air Pollutants'' (USEPA 1992) (Tiered Modeling Approach) and is consistent with EPA risk characterization guidance ''Air Toxics Risk Assessment Reference Library—Volume 2—Facility-Specific Assessment'' (USEPA, 2004). The PCA conducted dispersion modeling for 67 cement plants and 112 cement kilns, representing about two-thirds of all operating cement plants in the U.S., using stack parameter data provided by cement companies and conservative assumptions regarding (among other factors) HCl stack concentrations, operating conditions, receptor locations, and dispersion characteristics. The kilns for which data were provided cover a full range of kiln types, operating conditions, and stack parameters. The three-tiered modeling approach consists of:

- Tier 1—Lookup tables.
- Tier 2—Screening dispersion modeling.
- Tier 3—Detailed dispersion modeling.

The concentration estimates from each modeling tier should be more accurate and less conservative than the previous one. As a result, the level of complexity of the modeling and data input information required for each tier is greater than for the previous tier. If a plant showed emissions below the threshold concentration in any tier, that plant was not included in the next tier of modeling.

In order to evaluate potential health impacts it is necessary to establish long term concentration thresholds. The RfC is a long-term threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of significant noncancer health effects in humans. We have determined that the RfC for HCl of 20 micrograms per cubic meter ($\mu g/m^3$) is an appropriate threshold value for assessing risk to humans associated with exposure to HCl through inhalation (63 FR 18766, April 15, 1998). Therefore, the PCA used this RfC as the threshold value in their exposure assessment for HCl emitted from cement kilns.

The general approach was that actual release characteristics were used for stack height, stack diameter, exit temperature, and exit velocity, based on information provided by the individual facilities modeled by the PCA. The analyses performed under each tier assumed worst case operating scenarios, such as maximum production rate and 24 hours per day, 365 days per year operation, and that all kilns were located 10 meters from the property boundary line. HC1 emission rates were assumed to be 130 ppmv for all kiln types. This is an extremely conservative number. Hydrogen chloride emission rates are below 10 ppmv at most facilities, and the highest value for which we have data is below 45 ppmv. In the Tier 2 analyses, worse case metrological conditions were assumed. Further, it is important to note that these predicted impacts are located adjacent to facility property lines, many times in locations where chronic exposure is not expected. Impacts at potential residential locations would be expected to be significantly below those presented in the analysis.

The PCA study generated estimates of chronic (annual average) concentrations for comparison to the relevant health reference values or threshold levels. Chronic exposures were compared to the RfC of 20 $\mu g/m^3$ for long-term continuous exposure.

Noncancer risk assessments typically use a metric called the Hazard Quotient (HQ) to assess risks of exposures to noncarcinogens. The HQ is the ratio of exposure (or modeled concentration) to the health reference value or threshold level (i.e., RfC or REL). HQ values less than 1 indicate that exposures are below the health reference value or threshold level and are likely to be without appreciable risk of adverse effects in the exposed population. HQ values above 1.0 do not necessarily imply that adverse effects will occur, but that the potential for risk of such effects increases as HQ values exceed 1.0.

For the PCA assessment, if the HQ was found to be less than one for any of the tiers using conservative defaults and modeling assumptions, the analysis concluded with that tier. On the other hand, if the HQ exceeded one, analysis proceeded to subsequent tiers.

The Tier 1 modeling resulted in an HQ above 1 for most facilities. Therefore, a Tier 2 analysis was required. In the Tier 2 analysis, all facilities except for five showed an HQ below 1.

For the five facilities with an HQ above 1, additional data were obtained on the actual HCl and stack moisture concentrations at these facilities and the Tier 2 modeling analysis was rerun. The refined Tier 2 analysis resulted in HQ values of 0.30 or less for all five facilities.

Thus, we have evaluated and are comfortable with PCA's calculations and feel confident that exposures to HCl emissions from the facilities in question are unlikely to ever exceed an HQ of 1.0. Therefore, we believe that the predicted exposures from these facilities should still be protective of human health with an ample margin of safety. Put another way, total exposures for nearby residents would not exceed the short-term or long-term health based threshold levels or health reference values. Similarly, based on the PCA analysis we believe that the acute exposure to HC1 for these facilities would not exceed the short-term, health-based threshold level.

The standards for emissions must also protect against significant and widespread adverse environmental

effects to wildlife, aquatic life, and other natural resources. The PCA did not conduct a formal ec0ological risk assessment. However, we have reviewed publications in the literature to determine if there would be reasonable expectation for serious or widespread adverse effects to natural resources.

We consider the following aspects of pollutant exposure and effects: toxicity effects from acute and chronic exposures to expected concentrations around the source (as measured or modeled), persistence in the environment, local and long-range transport, and tendency for biomagnification with toxic effects manifest at higher trophic levels.

No research has been identified for effects on terrestrial animal species beyond that cited in the development of the HCl RfC. Modeling calculations indicate that there is little likelihood of chronic or widespread exposure to HCl at concentrations above the threshold around cement manufacturing plants. Based on these considerations, we believe that the RfC can reasonably be expected to protect against widespread adverse effects in other animal species as well.

Plants also respond to airborne HCl levels. Chronic exposure to about 600 µg/m3 can be expected to result in discernible effects, depending on the plant species. Further, in various species given acute, 20 minute exposures of 6,500 µg/m3, field studies report different sensitivity to damage of foliage. The maximum modeled long-term HCl concentration (less than 100 $\mu g/m^3$) is well below the 600 $\mu g/m^3$ chronic threshold, and the maximum short-term HCl concentration (less than 1600 $\mu g/m^3$) is well below the 6,500 $\mu g/m^3$ acute exposure threshold. Therefore, no adverse exposure effects on plant species are anticipated.

HCl is not considered to be a strongly persistent pollutant or one where long range transport is important in predicting its ecological effects. In the atmosphere, HCl can be expected to be absorbed into aqueous aerosols, due to its great affinity for water, and removed from the troposphere by rainfall. Toxic effects of HCl to aquatic organisms would likely be due to the hydronium ion, or acidity. Aquatic organisms in their natural environments often exhibit a broad range of pH tolerance. Effects of HCl deposition to small water bodies and to soils will primarily depend on the extent of neutralizing by carbonates or other buffering compounds. Chloride ions are essentially ubiquitous in natural waters and soils so minor increases due to deposition of dissolved HCl will have much less effect than the deposited hydronium ions.

In conclusion, acute and chronic exposures to expected HCl concentrations around cement kilns are not expected to result in adverse environmental toxicity effects. HC1 is not persistent in the environment. Effects of HCl on ponds and soils are likely to be local rather than widespread. Finally, HCl is not believed to result in biomagnification or bioaccumulation in the environment. Therefore, we do not anticipate any adverse ecological effects from HCl.

The results of the exposure assessment showed that exposure levels to baseline HCl emissions from cement production facilities are well below the health threshold value. Additionally, the threshold values, for which the RfC and AEGL values were determined to be appropriate values, were not exceeded when considering conservative estimates of exposure resulting from cement kiln emissions as well as considering background exposures to HCl and therefore, represent an ample margin of safety. Furthermore, no significant or widespread adverse environmental effects from HCl are anticipated. Therefore, under authority of section 112(d)(4), we have determined that further control of HCl emissions from new or existing cement manufacturing plants under section 112(d) is not necessary.

C. Determination of MACT for THC Emissions

1. Floor Determinations

THC serve as a surrogate for non-dioxin organic HAP emissions for this source category. During the development of the 1999 Portland Cement NESHAP, EPA identified no add-on air pollution control technology being used in the Portland cement industry whose performance could be used as a basis for establishing a MACT floor for controlling THC emissions from existing sources. EPA did identify two kilns using a system consisting of a precalciner (with no preheater), which essentially acts as an afterburner to combust organic material in the feed. The precalciner/no preheater system was considered a possible basis for a beyond-the-floor standard for existing kilns and as a possible basis for a MACT floor for new kilns. However, this system was found to increase fuel consumption relative to a preheater/precalciner design, to emit six times as much SO_2, two and one half times as much NO_X, and 1.2 times as much CO_2 as a preheater/precalciner kiln of equivalent clinker capacity. Taking into account the adverse energy and environmental impacts, we determined that the precalciner/no preheater design did not represent MACT (63 FR 14202, March 24, 1998). We also considered feed material selection for existing sources as a MACT floor technology and concluded that this option is not available to existing kilns, or to new kilns located at existing plants because these facilities generally rely on existing raw material sources located close to the source due to the cost of transporting the required large quantities of feed materials. However, for new greenfield kilns, feed material selection as achieved through appropriate site selection and feed material blending is demonstrated and is the basis for new source MACT (63 FR 14202, March 24, 1998).

In our proposed amendments we reexamined MACT for THC for both new and existing facilities. We proposed to adopt the same standards for Portland cement kilns as are applicable to kilns that fire hazardous waste (40 CFR 63.1220(a)(5)). Those standards are based on using good combustion conditions to destroy hazardous air pollutants in fuels. Our rationale for proposing to adopt these standards was that the THC and carbon monoxide (CO) standards guarantee that the kiln will operate under good combustion conditions and will minimize formation (and hence, emissions) of non-dioxin organic HAP from fuel combustion. We believed that the control of THC emissions from cement kilns which do not fire hazardous waste should be no more difficult to control than emissions for kilns that do fire hazardous waste because GCP are maintainable by either type of kiln, and the hazardous waste cement kilns would be the more challenged in that regard. Because we had no data upon which to set a different standard, and because we believed these levels were indicative of good combustion in any case, the adoption of the standards for cement kilns firing hazardous waste was deemed appropriate.

We continue to believe that good fuel combustion conditions are indicative of the performance of the median of the best performing 12 percent of existing sources for controlling non-dioxin organic HAP. However, based on comments received on the proposed amendments, and additional emission data analysis, we believe our proposed quantified method of monitoring good fuel combustion, i.e. setting specific THC or CO levels, was flawed.

Industry commenters had noted that the majority of the THC emissions from a cement kiln main stack result from the

introduction of feed materials into the cold end of the kiln. These emissions are essentially a function of the organic content of the raw materials, and cannot be controlled using GCP, which is the basis of our MACT floor. At proposal we agreed with this assessment (and continue to agree with it), but believed that the fact that cement kilns that burn hazardous waste can meet these standards indicated that the proposed level could be met by all cement kilns under good combustion conditions, even considering the fact that good combustion cannot control THC or CO emissions emanating from organic materials in the feed. We also believed that by allowing a facility to monitor CO as a surrogate for THC, we had provided sufficient flexibility to account for variations in feed material organic content.

We have reevaluated these assumptions. First, we obtained additional THC emission data from several facilities. These data demonstrate that there are certain cement facilities where THC emissions, with no indication of poor fuel combustion practices, exceed 20 ppmv. The data also indicate that achieving the 100 ppmv CO level, even for cement kilns with low organic content feed and good fuel combustion conditions, is not possible without use of a control device. See Lehigh CO and THC data in docket EPA-HQ-OAR–2002–0051. Moreover, the analogy with hazardous waste-burning cement kilns breaks down. If a cement kiln that fires hazardous waste cannot meet the THC or CO limits in the Hazardous Waste Combustor (HWC) NESHAP due to organic materials in their feed, they can (and have) simply stopped firing hazardous waste. This can either be done permanently, or temporarily anytime the kiln operator notes that THC or CO emissions are approaching the emission limits. This option is not available to cement kilns that do not fire hazardous waste; they cannot stop making cement without ceasing business altogether. This would mean that facilities with higher levels of organic materials in the raw materials would be forced to adopt some type of add-on control to meet the emissions limits. As we have previously stated, we believe this would result in the imposition of a beyond-the-floor standard without the mandated consideration of costs and other impacts. See 70 FR 72335.

As a result, although we adhere to our approach at proposal that the MACT floor for control of non-dioxin organic HAP at existing sources is operating under good combustion conditions, we are adopting a different means of demonstrating that good fuel combustion conditions exist.

In the final amendments, we are requiring that existing kilns and in-line kilns/raw mills must implement GCP designed to minimize THC from fuel combustion. GCP include training all operators and supervisors to operate and maintain the kiln, calciner, and pollution control systems in accordance with good engineering practices. The training shall include operating the kiln, calciner, and pollution control system in a manner to minimize excess emissions.

We have also reexamined the proposed MACT floor for new sources. There are currently two cement kilns with add-on controls which reduce emissions of THC. At one facility, activated carbon is injected into the flue gas and collected in the PM control device. The carbon adsorbs some of the THC. The collected carbon is then reinjected into the kiln in a location that ensures destruction of the collected THC. However, the THC emissions from this facility are the highest for any facility for which we have data. Therefore, we do not consider this to represent the best controlled source. This same facility also has an alternative control scheme for THC of a limestone scrubber followed by a regenerative thermal oxidizer (RTO). However, these control devices have not operated continuously due to significant operation problems caused by the site specific constituents in the flue gas. (See e-mail from Michael D. Maillard, Michigan Department of Environmental Quality in docket EPA–HQ–OAQ–2002–0051.) Because these controls have not been demonstrated to have the ability to operate continuously, we cannot consider them as the basis for a new source MACT floor (or an emission standard, for that matter).

A second facility also has a limestone scrubber followed by an RTO. The scrubber is necessary to prevent fouling, plugging, and corrosion of the RTO. In this case the scrubber/RTO operates continuously and efficiently. This facility has been tested and showed VOC (essentially the same as THC) emission levels of 4 ppmv (at 7 percent oxygen), and currently has a permit limit for VOC of approximately 9 ppmv. The RTO has a guaranteed destruction efficiency of 98 percent of the combined emissions of CO and THC. Based on this information we believe this facility is the best controlled source, and that the performance of a limestone scrubber followed by an RTO is the basis for new source MACT floor for non-dioxin organic HAP, measured as THC. We explain below how we assess the long-term performance capabilities of this control device considering variable organic levels in raw materials and other process variabilities.

We are retaining the proposed THC emission limit of 20 ppmv measured at the main kiln stack as the MACT floor for all new or reconstructed kilns and inline raw mill/kilns. An alternative to the 20 ppmv floor level is that a facility may demonstrate a 98 percent reduction in THC emissions from uncontrolled levels—the level of emission reduction required by permit for the best performing source in the category. We have determined in other rules that a 20 ppmv outlet emissions level or 98 percent destruction efficiency represent the long term performance of an RTO under the varying conditions typically encountered in industrial applications. See Thermal Incinerators and Flares in Docket EPA–HQ–OAR–2002–0051. As noted above, the one cement facility with an RTO operating full-time has actual and permitted emission levels which are below 20 ppmv. However, the performance guarantee at this facility is based on the combined emissions of CO and THC. Therefore, all new facilities could meet the permitted emission levels of the one facility that has an RTO only if they all have the same levels of CO in the exhaust gas. We have no data to support that all new kilns will have sufficient CO in the exhaust streams to guarantee that they can meet the same level of performance as the one facility noted above, or, conversely that this one facility would continue to meet the same THC levels if CO levels in its exhaust gas differed. We thus believe long term performance for THC alone is better characterized based on the well-established data documenting performance of RTO for THC. Moreover, the percent reduction achievable by an RTO is dependent on the inlet concentration of organics. See Thermal Incinerators and Flares in Docket EPA–HQ–OAR–2002–0051. Thus, we believe that a limit based on the demonstrated performance of RTO under a variety of circumstances is the best measure of the long term performance of this device under the circumstances likely to be encountered by new cement kilns, especially varying levels of organics in the feed.

2. Beyond-the-Floor Determinations

In the December 2005, proposed amendments we considered beyond-the-floor options for existing sources of substituting raw materials with lower organic contents, but we determined this beyond-the-floor option was not feasible (70 FR 72340). We also considered a beyond-the-floor THC

standard of 20 ppmv based on the use of the scrubber/RTO control system. Based on the available data, we estimate that approximately 75 percent of existing kilns could meet a 20 ppmv standard without the addition of controls. For an existing preheater/precalciner kiln that could not meet a 20 ppmv standard without controls, the capital cost would be approximately $10.7 million and the total annualized cost would be approximately $3.9 million. The cost per ton of THC reduction would be in the area of $20,000, assuming an inlet concentration of about 63 ppmv. We estimate that approximately 5 percent of the THC is actually organic HAP. Therefore, the cost of organic HAP reduction would be $398,000 per ton. In addition, the energy use for one large kiln to operate an RTO would be approximately 99.7 billion British thermal units per year, a very high energy consumption rate. The wet scrubber required upstream of the RTO would also result in 40 million gallons per year of additional water usage and create 45,500 tpy of solid waste (from dewatered scrubber sludge). Based on the costs, significant adverse energy impacts, and adverse non-air quality health and environmental impacts, we do not believe a beyond-the-floor standard is justified.

We also examined a beyond-the-floor regulatory option based on the use of ACI for THC control. The total annual cost for this option would be $470,000 to $600,000 for an existing preheater/preclaciner kiln. The cost per ton of THC reduction would be in the area of $5,000, assuming an inlet concentration of about 63 ppmv. We estimate that approximately 5 percent of the THC is actually organic HAP. Therefore, the cost of organic HAP reduction would be $100,000 per ton. In addition, this control option would generate approximately 850 tpy of solid waste. Based on the high costs, energy impacts, and adverse non-air quality health and environmental impacts, we do not believe a beyond-the-floor standard is justified.

We did not examine a beyond-the-floor regulatory option for new sources because there are no controls that would, on average, generate a greater THC reduction than a combination of a wet scrubber/RTO. Thus, the floor level is also new source MACT.

3. Conclusion

In sum, we conclude that the standards for THC for all existing cement kilns is implementing GCP designed to minimize THC emissions from fuel combustion. The compliance date for this standard is one year from December 20, 2006. Because all facilities already have some type of training program, we believe one year is sufficient to comply with this requirement. See section 112(1)(3) (compliance dates for MACT standards ''shall provide for compliance as expeditiously as practicable'').

The standard for new sources is to meet a THC standard of either 20 ppmv or a 98 percent reduction in THC emissions from uncontrolled levels. However, as explained above, performance of a back-end control device (*i.e.* the RTO, preceded by an enabling scrubber) was not the basis of the proposed new source standard. Information that one kiln utilizes an RTO, as well as information regarding the technical capabilities of RTO, emerged following the public comment period and therefore has not previously been available for public comment. To afford opportunity for comment, EPA is itself immediately granting reconsideration of the new source standard for THC in a notice published elsewhere in today's **Federal Register**.

The original Portland Cement NESHAP contains a 50 ppmv THC emissions limit for new greenfield kilns, kilns/inline raw mills, and raw materials dryers. There are no situations we can identify where a 50 ppmv limit would be more stringent than a 98 percent reduction limit. Since this 50 ppm limit is less stringent than the new source standard we are adopting in this rule reflecting performance of an RTO, it is obviously not appropriate to retain it. We are thus finding that the floor for greenfield new sources (and all other new sources under this rule) is 20 ppm/98 percent THC, with one exception. This new source limit will, at least for some new facilities, require the application of a back end control. For this reason, we do not believe this limit should be applied retroactively to sources constructed prior to December 2, 2005, the date of proposal for the amendment. See the response to comment concerning new sources in section VI for our rationale for this decision. So for sources constructed prior to December 2, 2005, we are not amending the 50 ppmv THC limit.

Consistent with section 112(c)(6) we are applying the 20 ppmv/98 percent reduction limit to both major and area new sources. We are also applying the limit to raw materials dryers. We anticipate that all new kilns will be preheater/precalciner kilns with an inline raw mill (*i.e.* there will be no separate dryer exhaust). This is the design of the kilns that form the basis of new source MACT for THC. However, we see no reason that the floor level of control should not apply in the case where there is a separate raw material dryer. We note that in the original NESHAP, the 50 ppmv standard also applied to raw material dryers.

We are adopting our proposed requirement that compliance for a THC standard will be demonstrated using a CEM and a 1-hour averaging period. See 70 FR 72340. The previous 50 ppmv standard for new greenfield sources was based on a monthly average. We believe a monthly average was appropriate for that standard (and are retaining monthly averaging for kilns subject to that standard) because the standard's basis is selection of raw materials. There can be significant short term variations in raw materials, even if a facility can meet the standard in the long term. In the case of these final amendments the required level of performance is based on an emissions control technology. Therefore, we do not anticipate the same type of short term variability that existed with the previous 50 ppmv standard.

Because the final standard is more stringent than the standard EPA proposed, the compliance date for sources which commenced construction after December 2, 2005, and before promulgation of this final rule is 3 years from December 20, 2006. See section 112(i)(2). We consider the final standard to be more stringent than the proposed standard because it is based on the performance of a control device (notwithstanding that the numeric limit is the same as proposed), and now controls both THC emissions from fuel combustion and THC emissions resulting from the organic materials in the kiln feed, and is more likely to result in significant costs and changes in operation than the proposed standard.

For new sources that elect to meet THC emissions limits using ACI, we are incorporating the operating and monitoring requirements for ACI that are applicable when ACI is used for dioxin control.

D. Evaluation of a Beyond-the-Floor Control Option for Non-Volatile HAP Metal Emissions

In our MACT determination for PM (the surrogate for non-volatile HAP metals), we concluded that well-designed and properly operated FF or ESP designed to meet the new source performance standards (NSPS) for Portland cement plants represent the MACT floor technology for control of PM from kilns and in-line kiln/raw mills. Because no technologies were identified for existing or new kilns that would consistently achieve lower

emissions than the NSPS, EPA concluded that there was no beyond-the-floor technology for PM emissions (63 FR 14199, March 24, 1998).

In *National Lime Association* v. *EPA,* the court held that EPA had failed to adequately document that substituting natural gas for coal was an infeasible control option, and also that EPA had not assessed non-air quality health and environmental impacts when considering beyond-the-floor standards for HAP metals (233 F. 3d at 634–35). As a result, the court remanded the beyond-the-floor determination for HAP metals for further consideration by EPA.

We presented our reexamination of a beyond-the-floor MACT control standard for HAP metals in the preamble to the proposed amendments, addressing the remand by showing that substitution of fuel or feed materials are either technically infeasible or cost prohibitive and therefore that a beyond-the-floor standard for HAP metals is not reasonable. (See 70 FR 72340–72341). We also indicated that non-air health and environmental impacts would be minimal, as would energy use implications (*id.* at 72341). We received no data in the comments on the proposed amendments that have altered our previous analysis. Therefore, we are not including a beyond-the-floor PM standard in these final amendments.

V. Other Rule Changes

On April 5, 2002, we amended the introductory text of 40 CFR 63.1353(a) to make it more clear that affected sources under the Portland Cement NESHAP were not subject to 40 CFR part 60, subpart F (67 FR 16615, April 20, 2002). In making this change, we inadvertently deleted paragraphs (a)(1) and (2) of 40 CFR 63.1353. The language in these paragraphs is still necessary for determining the applicability of 40 CFR part 60, subpart F. We proposed to reinstate these paragraphs as originally written in the final rule. We received no comments on this issue and are therefore reinstating the two paragraphs as proposed.

In the proposed amendments we requested comment on amending language published on April 5, 2002, whose purpose was to clarify that crushers were not subject to this NESHAP. The PCA believed that there had been misinterpretation of the amended rule text. However, we explained in the proposed amendments that we believe the PCA interpretation is not reasonable when reading the entire final NESHAP. However, we agreed that the rule language as written is conceivably open to more than one interpretation. See 70 FR 72341.

We proposed two resolutions to this issue. They were:

(1) Changing the wording of 40 CFR 63.1340(c) to make it clear that all raw materials storage and handling is covered by the NESHAP, but that crushers (regardless of their location) are not.

(2) Including crushers as an affected source in the Portland Cement NESHAP and incorporating the current requirements applicable to crushers contained in 40 CFR part 60, subpart OOO (and correspondingly, exempting crushers covered by the Portland Cement NESHAP from 40 CFR part 60, subpart OOO).

We received several comments from State and local agencies supporting our contention that the intent of the rule language at issue was to exclude crushers, and that our interpretation of the rule language was correct. We considered simply deleting the (potentially) confusing language and adding clarifying language that a crusher located after raw materials storage would be covered by this subpart. However, we have not been able to identify any facilities where the crusher is located after raw materials storage. In addition, we do not have data to determine the impacts of adding coverage of this piece of equipment to this subpart. For that reason, we are modifying the language in § 63.1340(c) to state that crushers are not covered by this subpart regardless of their location. There are currently no regulations that regulate existing crushers in this application. New crushers would potentially be subject to the requirements of 40 CFR 60, subpart OOO.

VI. Responses to Major Comments

This section presents a summary of responses to major comments. A summary of the comments received and our responses to those comments may be found in Docket ID No. EPA–HQ–OAR–2002–0051.

Comment: According to several commenters, EPA's proposal did not satisfy the mandate issued by the DC Circuit Court of Appeals. On EPA's analysis of MACT for mercury, HCl, and THC; EPA's beyond-the-floor analysis; and the risk-based exemptions from HCl standards, one commenter states they are unlawful, arbitrary, capricious, and irrelevant. These commenters state that the court was clear in its directive to EPA that the absence of technology-based pollution control devices for HCl, mercury, and THC did not excuse EPA from setting emission standards for those pollutants.

Response: Although we disagree with the premise of this comment, the comment is moot because we are setting standards for all HAP which was addressed by the court's mandate. We agree that the court stated the absence of technology-based pollution control devices for HCl, mercury, and THC did not excuse EPA from setting emission standards for those pollutants. In response to the court's opinion, we have evaluated all possibilities of setting standards, including technology based control, fuel and raw materials changes, and process modifications. We believe this evaluation is what the court intended. See 70 FR 72335.

Comment: Regarding EPA's rejection of beyond-the-floor standards for each HAP, one commenter states that EPA's reasoning is both unrelated to the relevant statutory mandate and arbitrary and capricious, as well as completely ignoring currently available control measures of which EPA is aware and which would result in reductions of emissions of mercury, HCl, THC and other HAP.

Response: Where we have rejected beyond-the-floor standards we have evaluated all available control methods that have been demonstrated for this source category. We also evaluated control technologies that have not been demonstrated, but that we have reason to believe may be effective (such as ACI). With one exception, which is banning the use of fly ash with elevated mercury contents that result from sorbent injection where such a practice would increase mercury emissions, in no case did we find that a beyond-the-floor standard was justified (''achievable'' in the language of section 112(d)(2)) taking into consideration costs, energy, and non-air quality health and environmental impacts.

Comment: According to one commenter, EPA's refusal to set mercury standards demonstrates contempt of court. The commenter states that EPA's reconsideration of MACT for mercury did not satisfy the court's directive to establish emissions standards and not just reconsider the issue.

Citing the CAA's requirements to set emission standards for each HAP listed in 112(b) and, as directed in 112, for each category of sources for the HAP applying the maximum achievable degree of reduction, the commenter states that EPA's decision to not set mercury emission standards is unlawful.

Response: EPA strongly disagrees with the commenter's characterization of the proposed standards in the proposed rule. EPA issued the proposed rule consistent with the court's

instructions in the remand. In response to comments received, however, EPA has modified the proposal and adopted specific standards for each HAP covered by the court's mandate. Thus, this comment is moot, even accepting the commenter's premise (which EPA does not), since EPA is establishing standards (in the sense the commenter uses the term) for each HAP covered by the court's mandate. Moreover, as explained in other parts of this preamble, EPA has carefully analyzed many different possibilities for setting standards for the HAP covered by the remand, examining not only technology-based back end controls but control of inputs to cement kilns as well. We believe that our action fully satisfies both the letter and spirit of the court's mandate.

Comment: The commenter above states that EPA's arguments for not setting mercury standards are without merit and provide several justifications for its view. First the commenter states that EPA's arguments for not setting mercury standard are irrelevant because EPA has a clear statutory obligation to set mercury standard and any reason for not doing so must be invalid.

Response: This comment is now moot, as just explained.

Comment: According to the same commenter, EPA's view as to what is achievable cannot replace the CAA requirement to set MACT floors reflecting what the best performing sources are achieving. The commenter states that the CAA mandates a floor reflecting the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) and not what EPA believes would be achievable. The commenter states that the court expressly required EPA to set emission standards based on what the best performers are actually achieving and not what EPA thinks is achievable.

Response: As *Mossville* and earlier cases make clear, because MACT standards (based on floors or otherwise) must be met at all times, the standards must reflect maximum possible variability (assuming proper design and operation of the various control mechanisms). See discussion at 70 FR 72335 and 70 FR 59436.

Comment: The same commenter disagrees with EPA's argument that the governing case law (*National Lime Ass'n* and *CKRC*) did not involve facts where the levels of performance tests are dependent entirely on composition of raw materials and fuel and cannot be replicated or duplicated. The commenter states that the governing case law addresses that exact issue: EPA's decision not to set mercury standards; and fourth the commenter claims EPA mistakenly cites the Copper Smelters (*Sierra Club*) and PVC MACT cases (*Mossville*) as justification for its approach. According to the commenter, these cases pertain to beyond-the-floor standards and do not apply to floor standards, which require EPA to set floors at emission levels that the best sources achieved, regardless of what EPA thinks is achievable.

Response: The commenter's reading of *Mossville* is not correct. The case involved a floor standard. See 370 F. 3d at 1240–42. We explained at proposal why we believe the discussion of raw materials in Sierra Club is also applicable to a floor determination. See 70 FR at 72335 n. 4.

Comment: The commenter further states that EPA's argument that its emissions data do not reflect performance over time, merely relates to the sufficiency of EPA's data. The commenter states that EPA is required to develop an approach to setting a floor standard, including collecting more emissions data if needed.

Response: Floor standards are to reflect the performance of sources ''for which the Administrator has emissions information'' (section 112(d)(3)), which provision does not create an obligation to gather a specified amount of information. Moreover, not only must MACT standards, including standards reflecting the MACT floor, reflect performance variability but EPA may reasonably estimate what that variability can be, and is not limited to stack emissions measured in single performance tests as the commenter apparently believes. See *Mossville,* 370 F. 3d at 1242 (setting standard at a level slightly higher than the highest data point experienced by a best performing source ''reasonably estimates the performance of the best * * * performing sources''). Most basically, because MACT standards must be met at all times, a standard must reflect performance variability that occurs at all times, and this variability is simply not accounted for in single stack test results for mercury from a cement kiln.

Comment: The same commenter disagrees with EPA's position that setting the floor at emission levels achieved by the relevant best sources would require kilns to install back-end controls, thus bypassing beyond-the-floor requirements of achievability, considering cost and other statutory factors. Contrary to EPA's position, the commenter argues that sources are using low mercury fuel and feed and some kilns are using controls that reduce mercury emissions, albeit they may not be doing so deliberately to reduce mercury emissions. According to the commenter, whether the sources are achieving low mercury emissions levels through deliberate measures or coincidentally are statutorily irrelevant.

Response: We disagree with all the points raised in the comment above and preceding comments that EPA's arguments for not setting mercury standards are without merit. As noted above, we believe we have met the court's directive by evaluating all available methods of mercury control, including changes to fuels, raw materials, and process controls. We do not agree that the court directed us to set standards regardless of the facts, nor do we agree that section 112(d)(3) of the CAA requires us to set floor standards that cannot be met without requiring even the best performing facilities to apply beyond-the-floor controls—controls not used by any sources in the source category, even those which are ostensibly the best performing (i.e. the lowest emitters in individual performance tests).

The commenter correctly noted that we are required to set standards based on facilities for which the administrator has emissions information. However, as explained previously in the notice, the emissions levels in the data available to the administrator are mainly influenced by factors that are beyond the control of the facilities tested, and the test results can neither be replicated by the individual facilities nor duplicated by other facilities. In addition, these are short term data that we believe are not indicative of the sources' long term emissions. The commenter states that we should get better data. However, they do not indicate how we would be able to perform this task given the fact that there are no long term data available for mercury emissions from cement kilns: We know of no case where any cement facility has applied mercury continuous emission monitoring (CEM) technology, or gathered any long term emissions data we could use to set a national standard. (We do note, however, that we are ourselves granting reconsideration of the new source standard for mercury, in part to initiate field testing of cement kilns equipped with wet scrubbers.)

The commenter further states that docket records for Portland cement, the hazardous waste standards, and electric utilities demonstrate that various pollution controls have the ability to reduce mercury emissions. We agree with this comment in part. We believe both ACI and wet scrubbers will reduce mercury from cement kilns (and the floor for mercury for new sources is

based on performance of a wet scrubber). We did evaluate these controls as beyond-the-floor control options and determined, based on what we consider reasonable assumptions of their performance, that requiring facilities to apply these controls was not achievable, within the meaning of section 112(d)(2) of the CAA, after considering costs, energy impacts, and non-air quality health and environmental impacts.

We also agree that fabric filters and ESPs can reduce mercury emissions because there is some mercury retained in the collected CKD. As explained earlier, we agree that this forms the basis of a MACT floor (and standard), although the degree of mercury reduction is site-specific based on the rate of recycling per kiln. Because the amount of emission reduction associated with the practice is site specific and not directly measurable, we are expressing the standard as a work practice. We also explained why requiring further reductions based on more CKD wastage is not justified as a beyond-the-floor standard based on considerations of cost and adverse non-air quality health and environmental impacts (increased waste generation and disposal), as well as increased energy use.

In no case did we find that any of the control options discussed by the commenter could be considered as the basis for a MACT floor for new or existing sources (with the two exceptions just noted) for reasons previously discussed.

We also note that the HWC NESHAP does have mercury limits. However, these limits are achieved by controlling the mercury input of the hazardous waste feed (through source separation, blending, or other means). Therefore, any comparison of the mercury limits for cement kilns that burn hazardous waste with cement kilns that do not is misplaced.[15]

The commenter notes that cement kilns are achieving superior mercury emissions through a variety of different means, and further states that whether they are doing this intentionally is legally irrelevant. The comment is correct that the reason for application of a particular control technique is irrelevant. *National Lime,* 233 F. 3d at 640. But the commenter fails to consider that even in the case where a facility applies some type of control scheme, and that scheme happens to also reduce a particular HAP, the facility is taking specific actions that results in a reduction of the pollutant. For example, a facility that installs a thermal oxidizer to reduce total hydrocarbons also reduces organic HAP, even though the thermal oxidizer may not have been installed for purposes of HAP reduction. However, the facility is still taking a specific action that reduces HAP emissions. Also, another facility can install a similar control device and expect to achieve the same result. Results thus can be duplicated from site to site.

In the case of cement kilns, the ''actions'' being taken that in some cases may reduce mercury emissions are the result of site specific factors that cannot necessarily be duplicated elsewhere. For example, facility A may achieve lower mercury emissions than facility B simply because the limestone quarry used by facility A has a lower mercury content (at least on the day of the respective performance tests). Facility A is not achieving lower mercury emissions deliberately, but it is still achieving a lower level. However, because facility B does not have access to facility A's quarry, it would have to use some other control technique to match facility A's mercury emissions. The commenter never disputes that requiring facility B (and quite possibly A) to match the performance will require installation of a control device not used in the industry. As explained at proposal and earlier in the preamble, this amounts to an impermissible de facto beyond-the-floor standard.

The commenter also states that the best performing kilns are achieving lower mercury emission using a variety of methods, but does not offer any data or analysis as to what these methods are, or how other facilities could duplicate the performance of the lower emitting facilities without adding some type of back end controls. In addition, due to the wide variation in emissions level due to variations in raw materials, we have no data to show conclusively that even if back end controls were applied that kilns with higher mercury emissions due to higher mercury contents in their limestone could achieve the same emissions levels as facilities with naturally occurring low mercury limestone used in the (one-time, snapshot) performance test.

Comment: Regarding EPA's rejection of a beyond-the-floor mercury standard on the basis of low levels of mercury emissions and high costs of reducing emissions, one commenter states that the CAA requires that EPA's standards must reflect the ''maximum degree of reduction that is achievable'' considering the ''cost of achieving such emission reduction'' and other enumerated statutory factors. According to the commenter, the only relevant factors regarding the cost measures are: (1) Whether it is too costly to be ''achievable''; and (2) whether it would yield additional reductions, i.e., without the measure, the standard would not reflect the ''maximum'' achievable degree of reduction. The commenter states that EPA does not claim that the use of ACI would not be achievable, only that ACI is not ''justified.'' This position, according to the commenter, contravenes the CAA and exceeds EPA's authority and would allow EPA to avoid properly determining the maximum degree of reduction achievable considering cost and the other enumerated factors.

Response: We disagree with the commenter's interpretation.

The statute requires that EPA consider ''the cost of achieving such emission reduction'' (section 112 (d)(2)) in determining the maximum emission reduction achievable. This language does not mandate a specific method of taking costs into account, as the commenter would have it, but rather leaves EPA with significant discretion as to how costs are to be considered. See *Husqvarna AB* v. *EPA*, 254 F. 3d 195, 200 (D.C. Cir. 2001). In that case, the court interpreted the requirement in section 213 (a) (3) of the CAA (which mirrors the language in section 112(d)(2))that nonroad engines ''achieve the greatest degree of emission reduction achievable through the application of [available] technology * * * giving appropriate consideration to the cost of applying such technology'', and held that this language ''does not mandate a specific method of cost analysis''. The court therefore ''f[ound] reasonable EPA's choice to consider costs on the per ton of emissions removed basis''.

Moreover, where Congress intended that economic achievability be the means of assessing the reasonableness of costs of technology-based environmental standards, it says so explicitly. See Clean Water Act section 301 (b) (2) (A) (direct dischargers of toxic pollutants to navigable waters must meet standards reflecting ''best available technology economically achievable'' (emphasis added). There is no such explicit directive in section 112 (d)(2). EPA accordingly does not accept the commenter's interpretation.

Comment: Several comments support EPA's decision not to develop either an existing or new source floor for mercury. The commenters state that an achievable floor cannot be developed

[15] Indeed, the entire reason that hazardous waste burning cement kilns are a different source category is the impact and potential controllability of the hazardous waste inputs. See 64 FR at 52871.

because wide variation in mercury concentrations in raw materials and fuels used by cement kilns would make compliance impossible. One commenter also agrees with EPA's statement that a national conversion of cement kilns to natural gas is not possible due to serious supply problems and the lack of an adequate natural gas infrastructure.

Response: We agree with these comments that the Agency cannot establish a floor based on raw material or fuel inputs.

Comment: One commenter restates its original position that EPA's arguments regarding its inability to establish floors are irrelevant, unlawful and arbitrary. The commenter states that evidence made available since the original comment period closed confirms that: (1) Some kilns perform better than others; (2) consistent and predictable differences in emission levels can be attributed to differences in the raw materials, fuel, kiln design and control technology; and (3) additional measures for controlling mercury emissions are available to kilns. The commenter states that there is evidence that: (a) Some kilns use raw materials that are consistently higher or lower in mercury than other kilns as evidenced by a cement kiln in Tehachapi, California that uses limestone from a quarry adjacent to an abandoned mercury mine and consistently reports high (2000 lb/yr) mercury emissions—other kilns have consistently lower mercury levels because they use raw materials with low mercury levels; (b) there are many measures by which mercury emissions can be reduced as exemplified by Holcim's statement that mercury emissions can be controlled by careful input control and EPA's acknowledgement that mercury emissions are affected by the use of mercury-contaminated fly ash—as only 39 of 112 plants choose to use fly ash, the commenter states that a plant's deliberate choice about using fly ash (as well as the choice by some to burn tires, or choosing to burn a rank of coal lower in mercury, and use of by products from steel mills and foundries and flue gas dryer sludge) results in consistent and predictable differences in their mercury emissions; (c) wet kilns emit more mercury than dry kilns (twice as much according to EPA), showing that the kiln design results in a consistent and predictable difference in mercury emissions; and (d) additional emissions data confirm that some kilns are achieving consistently better emission levels than others. Several comments were received regarding the adequacy of the emissions data used in EPA's analyses. Several commenters state that EPA should collect data on mercury emissions and then determine mercury limits based on data. Recommendations for collecting additional data included soliciting test data from State and local agencies. Several commenters state that EPA should conduct a new MACT floor and beyond-the-floor evaluation based on current and complete data—including data from state and local agencies where cement plants are located—on mercury emissions from Portland cement plants. According to one commenter, EPA explained that its decision not to set mercury standards was due to a lack of emissions data while in reality it chose not to gather data under an incorrect statutory interpretation that it did not have to set standards if it believed there was no control technology available. The commenter states that now EPA has access to more mercury emissions data than it initially claimed including: (1) Toxic release inventory (TRI) data based on mercury stack monitoring by 35 plants and, (2) as indicated by EPA, data on mercury content of coal fly ash, shale, and clay that is either already available or can be easily obtained from existing sources—the commenter notes that Florida DEP reports that kilns collect several samples of the mercury levels in their raw materials on a daily basis.

Response: We disagree that our arguments regarding the inability to establish floors are irrelevant, unlawful and arbitrary. We agree that some kilns emit less mercury than others in individual performance tests. The argument that these kilns consistently perform better over time than other kilns is not correct, however, as shown in section IV.A.1.a above, where we showed that one of the lowest emitting kilns in a single test was one of the highest emitting in a later test due to raw material mercury variability. We thus do not believe it is appropriate to use the term ''perform better then others'' because this implies that the emission levels achieved are the result of some controllable action or otherwise will perform over time at some predictable level. A facility cannot achieve a performance level similar to another facility by varying its inputs because, as previously discussed, one facility does not have access to another's raw materials (or fuels), and therefore cannot be expected to necessarily achieve the same mercury emissions levels based on input control. The commenter acknowledges that facilities have significant variations in raw materials mercury content.

The commenter also notes that only some facilities choose to use fly ash which results in predictable and consistent differences in mercury emissions. While the statement that only some facilities use fly ash is correct, there are no data to indicate that the use of fly ash results in consistent and predictable differences in mercury emissions. All the raw materials and fuels that enter the kiln affect mercury emissions. The decision to use fly ash may or may not affect mercury emissions based on the mercury content of the raw materials the fly ash replaces. The only way to predict the impact on mercury emissions of fly ash for the plant currently using this material would be to obtain long term detailed raw materials and fuel analyses for every plant, including analyses of the replaced materials. However, in many cases the replaced materials may no longer be available. Neither are the data available for the current materials being used. In no way does the use of fly ash make the mercury emissions any more consistent than for facilities not using fly ash, or vice versa. All kilns are still subject to uncontrollable variations in raw materials and fuels, of which fly ash is only a small part. In fact, the two facilities with the highest measured mercury emissions do not use fly ash, and one of these facilities, which happens to have 30 days of feed materials analyses for mercury, shows significant variations in mercury emissions. There are no data to support any contention that using fly ash will inevitably result in a mercury emissions increase at any specific site.

The commenter also stated that kiln design—wet versus dry—affects mercury emissions. There are no data to support that statement, nor are we aware of any reason a wet or dry kiln would perform differently with respect to mercury emissions. The information referred to by the commenter is from the TRI. These data do not differentiate between kilns that burn hazardous waste, which are a different class of kiln subject to different regulations, and those that do not. Cement kilns that burn hazardous waste tend to be wet kilns and also tend to have higher mercury emission than kilns that do not burn hazardous waste, because of higher mercury levels in the hazardous waste fuels burned by these kilns. Therefore, the data cited by the commenter do not support their conclusion.

Several commenters also suggested that EPA collect additional emission test data from State and local agencies. We collected additional data, and have begun the process of gathering more. See section IV.A.1.b above, and the separate notice in today's **Federal Register** announcing reconsideration of

the new source standard for mercury. We believe data in the record conclusively show that because of the variations in raw materials mercury content show that any mercury limit based on these data would not be achievable on a continuous basis, even by the kilns that form the basis of the floor, without the requirement of applying beyond-the-floor back end control technology. The TRI monitoring data referenced by one commenter is actually short term tests. To our knowledge, there are no cement kilns using mercury continuous monitors. The data the commenter referenced from Florida are daily samples, but they are only analyzed on a monthly basis. In any case, any emission limit based on these data would not solve the problem that other facilities do not have access to the same raw materials.

Comment: In commenting on the adequacy of EPA analysis of the MACT floor for existing and new sources, several comments were received recommending that EPA give further consideration to requiring the use of emission control technology for reducing mercury emissions.

Several commenters state that EPA's analysis should have considered wet scrubbers, dry scrubbers, wet absorbent injection, dry absorbent injection, and fly ash retorting with mercury controls. One commenter states that in evaluating the MACT floor, EPA should establish a link between mercury emissions and existing controls for sulfur and particulate matter and examine potential co-benefit reductions. According to the commenter, this would be similar to the approach used by EPA in establishing the initial mercury caps in the Clean Air Mercury Rule (CAMR). The commenter believes that specific control equipment will result in a percent reduction of mercury whether the mercury is from feedstock or from fuel. Standards could be expressed as a desired percent control achieved using a specific control technology combination for sulfur and particulate matter as was done in the coal-fired electric steam generating unit determinations. The commenter states that such an approach is necessary to determine a new source standard for Portland cement kilns. The commenter included the tables that were developed for the percent reduction determination for electric utilities. One commenter states that more than 60 U.S. and 120 international waste-to-energy plants fueled with municipal or industrial waste or sewage sludge use sorbent injection ahead of fabric filters to remove mercury from flue gases. The sorbents used include activated carbon, lignite coke, sulfur containing chemicals, or combinations of these compounds. Sorbent injection systems are demonstrated at the Holcim Dundee plant which is limited by its permit to 115 lb/yr mercury, most of which is assumed to be from coal. Mercury limits are also in place under the hazardous waste combustor rule (70 FR 59402): 120 μg/dscm for new or existing cement kilns; 130 μg/dscm for hazardous waste incinerators; 80 μg/dscm for large municipal waste combustors. The commenter states that these limits set a precedent for establishing more stringent mercury emission limits and that there are abatement technologies available to exceed requirements. The commenter provided emissions data for several U.S. cement kilns as well as emissions data from cement kilns operating in Europe. The commenter states that sorbent injection control technology is proven for mercury control and states that this technology has been demonstrated on full-scale demonstrations in the electric generating sector. According to the commenter, activated carbon is also used to remove SO_2, organic compounds, ammonia, ammonium, HCl, hydrogen fluoride, and residual dust after an ESP or FF and that the spent or used sorbent can be used as a fuel in the kiln and the particles are trapped in the clinker. The commenter notes that a cement manufacturer in Switzerland, fueled with renewable sludge waste, used activated carbon to achieve up to 95 percent reduction in SO_2 which correlates to an emission rate of less than 50 $\mu g/m^3$.

One commenter states that EPA should also consider pre-combustion technology for coal that has been demonstrated in the utility sector. One such technology, pre-combustion coal beneficiation, transforms relatively low cost, low rank western coal (lignite or subbituminous) into a cleaner more efficient energy source (k-Fuel™). This technology applies heat and pressure to reduce moisture and can increase heat value by 30–55 percent for low rank coals. The result is higher output per ton of coal while lowering emissions including reduction in mercury content by up to 70 percent or more and reduced emissions of SO_2 and NO_X.

Response: We have reevaluated the available emission control technology for reducing mercury emissions. The commenters mentioned numerous control technologies including wet scrubbers, dry scrubbers, wet sorbent injection, dry sorbent injection, and fly ash retorting. Dry sorbent injection and fly ash retorting have not been applied to cement kilns. Therefore, they cannot be considered the basis of a MACT floor. Dry scrubbers and wet sorbent injection systems have been applied at one location each, but these systems do not operate continuously and would therefore not be considered as a floor technology. We evaluated the carbon injection system mentioned by the commenter. However, the configuration of this system is different from the configuration required to achieve a mercury reduction. The fact that the facility meets a specific mercury limit is not attributable to the sorbent injection system, which is configured for control of total hydrocarbons. (See section IV.C. on why this facility does not represent new source MACT for THC emissions.)

We also are aware that wet scrubber technology has been applied to at least five cement kilns, and therefore we did evaluate wet scrubbers as a floor technology for both new and existing sources and as a beyond-the-floor technology for existing sources. Our analysis and conclusions are set out in sections IV.A.1.d and IV.A.2 above.

We did not evaluate control technologies other than wet scrubbers and ACI as a potential beyond-the-floor technology. We have no data to indicate that these controls are any more efficient or cost effective than the controls we did evaluate. In addition the performance of these controls is less certain than either wet scrubbers or ACI.

The commenter also notes that mercury limits have been applied to other source categories and to cement kilns that burn hazardous waste. The application of an emission limit to another source category or class of cement kiln does not, in and of itself, indicate that a mercury emissions limit is required or appropriate here. With respect to the mercury standards for cement kilns that burn hazardous waste, as noted earlier, these standards are based exclusively on control of mercury levels in the hazardous waste fuel inputs, and hence are not applicable to the Portland cement kiln category. See 70 FR 59648. In addition, we note that the limits mentioned are well above the emission test data for all but two cement kilns that do not burn hazardous waste. Cement kilns that burn hazardous waste typically have stack gas concentrations of 43 to 196 μg/dscm resulting from the hazardous waste alone (69 FR 21251, April 20, 2004). These levels, which reflect only the mercury emissions attributable to the hazardous waste, are themselves higher then the majority of the emission levels from cement kilns that do not burn hazardous waste, the majority of which are below 43 to 196 μg/dscm. See ''Summary of Mercury Test Data'' in Docket EPA–HQ–OAR–

2002–0051. Therefore, we believe it is reasonable to assume that cement kilns that do not fire hazardous waste are much lower emitters of mercury than the hazardous waste-firing cement kilns.

The commenter also mentioned pre-combustion technology for mercury control, including k-Fuel. Coal cleaning is another option for removing mercury from the fuel prior to combustion. In some states, certain kinds of coal are commonly cleaned to increase its quality and heating value. Approximately 77 percent of the eastern and midwestern bituminous coal shipments are cleaned in order to meet customer specifications for heating value, ash content and sulfur content. See Mercury Study Report to Congress: Volume VIII: An Evaluation of Mercury Control Technologies and Costs, December 1997. Given the fact that most coal is already cleaned, we believe that any benefits of mercury reduction from coal cleaning are already being realized. There is only one k-Fuel production plant of which we are aware, so this fuel is not available in sufficient quantities to be considered as a potential alternative fuel. We are not aware of any widely available coals that have been subjected to more advanced coal cleaning techniques. We also note that advanced coal cleaning techniques have an estimated cost of approximately $140 million per ton of mercury reduction. These costs per ton of removal are higher than costs of other potential beyond-the-floor technologies such as ACI and wet scrubbers.

Comment: Several comments were received regarding the need for EPA to include in its analysis of the MACT floor the use of work practices alone or in combination with control technologies to reduce mercury emissions. Two commenters state that the work practice of wasting a portion of the control device catch, that is disposing of a portion of the catch rather than recycling it back to the kiln, can reduce total mercury emissions. One commenter cites a European report showing that lowering the gas temperature upstream of the baghouse accompanied by disposing of part of the catch is an effective measure in reducing mercury emissions. According to the commenter, material removal is already practiced at many kilns in the U.S. for other reasons than mercury removal. This occurs for example when CKD is wasted or when a bypass is used at kilns with preheaters to relieve buildups of volatile components, e.g., chlorides or sulfates. The commenter states that such kilns emit less mercury through the stack than kilns that do not waste CKD. The commenter cites a publication of the PCA documenting this. The two commenters state that one opportunity to avoid the recycling of CKD is by mixing it with clinker to make masonry and other types of cement. One commenter states that CKD has numerous beneficial uses and can be sold as a byproduct by cement plants. The commenter addresses some of the barriers to the practice of mixing materials with clinker to make materials for sale. In response to comments that the industry apply various non-ACI controls or work practices to reduce mercury emissions, one commenter states that none of these practices have been demonstrated to be effective in controlling mercury emissions from cement kilns.

One commenter states that EPA could consider prohibiting or limiting CKD recycling in cement kilns while requiring ACI in conjunction with existing particulate matter control devices. According to the commenter, this approach would avoid the expense of an additional control device and its associated waste stream. The commenter recognizes that there is a possibility that the mercury and carbon level in the CKD may cause it to be considered a hazardous waste.

Two commenters support the use of alternative feed and fuel materials as techniques for reducing mercury emissions. One commenter states that EPA's evaluation of low-mercury fuels should have included petroleum coke. According to the commenter, testing at one kiln has shown that petroleum coke contained significantly less mercury than the coal previously used to fuel the kiln. The commenter also suggested evaluating the increasing use of tire-derived fuel and its impact on mercury emissions. One commenter states that data are available that indicate that mercury content of fuel and feed used by kilns is not so variable that an upper limit for mercury in coal and feed could not be set by EPA. One commenter states that EPA should collect sufficient data on the variability of mercury in feed and fuel materials to actually determine what the variability is.

One commenter responded to comments recommending that kilns switch from coal to petroleum coke, fuel oil, and tire-derived fuel because these have lower mercury concentrations. The commenter states that limited supply, long distances, and permitting issues make it impossible to replace a significant percentage of the coal burned with alternative fuels. The commenter states, however, that the industry could utilize a much larger amount of these fuels if permitting barriers were lowered.

Response: We agree that reducing the recycling of CKD has, in some cases, been shown to reduce mercury emissions and that this practice creates a floor for both existing and new sources. See section IV.A.1.c above. The amount of CKD recycled versus the CKD wasted at any facility is based on the concentration of alkali metals in the raw materials. Also, the effect of this practice on mercury emissions will be highly variable because the amount of mercury present in the cement kiln dust varies from facility to facility. Thus, we have adopted a work practice standard which will reflect these site-specific practices. We also have evaluated a beyond-the-floor control option based on further reducing the recycling of CKD back to the cement kiln and determined it was not achievable (within the meaning of section 112 (d)(2)) after considering costs, energy impacts, and non-air quality health and environmental impacts. This would also be the case if one combined ACI and reduced or eliminated the recycling of CKD.

One commenter also suggested the use of lower mercury fuels, specifically petroleum coke, and setting a limit for mercury emission based on the upper bounds of the limits of mercury in the feed and fuel. The comment on petroleum coke is addressed above in section IV.A.1.a.i. We rejected this later option because it would set a limit that has no environmental benefit because it achieves no emissions reduction. See section I.A.1.b above. Another commenter mentioned the problems with setting a limit based on changes to fuels, namely that limited supply would preclude any MACT floor based on fuel switching, and would likewise preclude any beyond-the-floor option. We agree with those comments. See 70 FR 72334.

Comment: Several comments support EPA's decision not to set ''beyond-the-floor'' mercury standards for the following reasons: (1) Any possible activated carbon injection ''back-end'' control technology would be prohibitively expensive; (2) the cost per mass of mercury emissions reduced would be astronomical; and (3) the application of such possible activated carbon injection would generate additional solid waste and increase energy use.

Response: We agree with these comments for the reasons previously discussed.

Comment: A commenter states that in the beyond-the-floor evaluation, EPA failed to consider other control measures that reduce mercury emissions. The commenter cited coal cleaning, mercury-specific coal

treatments, optimization of existing control (the commenter supplied a list of optimizing technologies), as well as currently available control technologies such as enhanced wet scrubbing, Powerspan-ECO®, Advanced Hybrid Filter, Airborne Process, LoTox process, and MerCAP. According to the commenter, mercury reductions for these technologies range from 20 percent to over 90 percent. According to the commenter, EPA's failure to evaluate any of these measures is arbitrary and capricious and contravenes CAA 112(d)(2) which requires the agency to set standards reflecting the maximum degree of reduction achievable through the full range of potential reduction measures.

In a later comment, the same commenter states that EPA failed to satisfy the CAA by not considering end-of-stack controls. As an example of a controlled source, the commenter states that Holcim's Zurich plant successfully uses the Polvitec system, a carbon filter system that controls mercury as well as organic pollutants.

One commenter objects to EPA's refusal to set beyond-the-floor mercury standards as unlawful and arbitrary. The commenter states that EPA failed to consider eliminating the use of fly ash as a beyond-the-floor standard even though it is possible for kilns not to use fly ash—a majority of kilns do not use any fly ash—and not using fly ash would reduce mercury emissions. For example, the commenter states that more than half the mercury emissions from an Alpena, MI kiln are from fly ash. According to the commenter, kilns could also reduce mercury emissions by using cleaner fuel (e.g., natural gas), using coal with lower mercury content, refraining from the use of other mercury containing by-products from power plants, steel mills, and foundries, and refraining from the use of flue gas dryer sludge. One commenter recommends that EPA conduct a new beyond-the-floor evaluation based on up-to-date and complete data.

Response: We have conducted additional beyond-the-floor analyses for all demonstrated control techniques for cement kilns. This included banning use of utility boiler fly ash as feed to cement kilns, reducing the recycling of CKD, use of wet scrubbers, and use of ACI. The statement that not using fly ash would reduce mercury emissions is not supported by existing data, as explained in section IV.A.1.b above. These are discussed in section I.A.2 above. The commenters mentioned other additional control techniques including both add-on controls and coal cleaning. These are not demonstrated control technologies for this source category. In the case of any coal cleaning technology, we did not specifically evaluate these technologies. We know of no case where these technologies have been used in the cement industry, or any other industry, as the basis for control of mercury emissions, therefore they cannot be considered a floor technology. We also do not consider these technologies to be demonstrated to the point where we would consider them as the basis of a beyond-the-floor standard. As noted above, most coals are already cleaned. Coals that have been cleaned using advanced cleaning techniques are not generally available. In addition, data from an evaluation of advanced coal cleaning indicated that the costs were approximately $140 million per ton of mercury reduction. See Mercury Study Report to Congress: Volume VIII: An Evaluation of Mercury Control Technologies and Costs, December 1997.

Comment: Citing the information used to estimate costs and mercury reductions associated with ACI as outdated, unsupported and unexplained, one commenter states that EPA's estimates are inadequate and, furthermore, ignores the more recent ACI data used in EPA's power plant rulemaking.

Response: We have updated our ACI costs based on more recent information. As explained above in discussions of potential beyond-the-floor options based on performance of ACI, we still do not find such standards to be achievable within the meaning of section 112 (d)(2).

Comment: One commenter states that recent tests for mercury emission from Portland cement plants in New York and Michigan show that EPA does not have an accurate picture of mercury emissions from this industry. The commenter states that the lack of accurate information affected EPA's analysis of ACI as a beyond the floor control. The commenter recommends that EPA conduct additional stack testing to collect accurate emissions data.

One commenter also states that EPA does not provide information on the amount of mercury that would be reduced by ACI. The commenter states that self-reported mercury emission data provided by industry in EPA's TRI, appear to grossly underestimate actual kiln mercury emissions and provides examples of such under-reporting. Based on the limited emissions test data, the commenter states that actual mercury emissions data could be ten times greater than the TRI estimates. The commenter states that EPA's estimate of the cost of ACI and the amount of mercury that would be reduced are arbitrary and capricious and, therefore, so is EPA's reliance on cost per ton estimates as a basis for rejecting ACI as a beyond-the-floor technology.

Two commenters state that, given mercury's toxicity and the significant mercury emissions from Portland cement plants, they strongly disagree with EPA's conclusion that standards to limit mercury emissions are ''not justified.''

Response: The commenters did not provide data to support their claims that mercury emissions from this source category are significantly underestimated. We are aware that recent tests at several facilities have indicated that they had significantly underestimated their mercury emissions. In some cases the mercury emissions were significantly higher. We are also aware of recent tests where the measured mercury emissions were low, and in at least one case was actually below previous estimates. We do not agree that these few cases indicate that our current estimates of mercury emissions are significantly in error.

Comments: Several commenters state that EPA has ignored or undervalued non-air impacts. Commenters state that EPA should consider non-air environmental, economic, and societal impacts resulting from contamination of water bodies and their lost recreational and commercial fishing uses negatively affecting tourism and jobs; and neurological effects on children caused by mercury exposures among females of child-bearing age. According to commenters, local advisories against eating fish due to mercury tissue levels undercut efforts to encourage fish consumption as a way to reduce risk of heart disease. One commenter states that in failing to set maximum degree of reduction standards that are achievable, EPA did not consider the costs of not setting mercury standards, including the public health costs of increased exposure to mercury in children as well as the societal costs of contaminated water bodies, fish, and other wildlife.

Response: The purpose of 112(d) standards is to apply maximum achievable control technology. The consideration of impacts such as those discussed above is performed during the section 112(f) residual risk phase. See *Sierra Club* v. *EPA,* 353 F. 3d 976, 989–90 (D.C. Cir. 2004) (rejecting the commenter's argument). We have begun this analysis for this source category. The results of this analysis will be included in a separate rulemaking.

Comment: Several commenters raised concerns related to the local impacts of industrial mercury emissions. According to one commenter, the high temperature of cement kilns results in mercury emissions that fall out and are deposited much closer to the source than was previously thought. One commenter cites research that confirms that mercury disproportionately affects nearby residents and that shows that nearly 70 percent of the mercury in an area's rainwater comes from nearby coal-burning industrial plants. One commenter states that EPA did not consider impacts of mercury hot spots, citing Florida and EPA research showing a reduction in local and regional fish mercury levels when MACT standards for medical and municipal incineration were implemented. The commenter provided documentation of impacts on local environments of lowering local or regional mercury emissions. One commenter states that they are concerned over the documented levels of mercury in fish in their county and the fact that three recently permitted Portland cement plants in their county are permitted to emit over 400 lb/yr of mercury in addition to a coal fired electrical generating plant that emits over 70 lbs of mercury annually.

Response: These factors will be considered in the section 112(f) residual risk analysis discussed above. It is impermissible to consider these risk-based factors in setting the technology-based standards at issue here.

Comment: EPA solicited comments on a potential ban of the use of mercury-containing fly ash from utility boilers as an additive to cement kiln feed. Numerous commenters state that a ban is premature for several reasons, with their objections falling into one of several groupings: anti-Resource Conservation and Recovery Act (RCRA) policy to encourage recycling that is protective of human health and the environment, CAMR in litigation, mercury removal technology not yet developed, substitutes may be more harmful, and cost of a ban has not been considered. Due to these concerns about the completeness of data they believe are relevant to banning the use of fly ash as a cement plant raw material, the commenters suggest the fly ash ban be postponed and studied further for now.

Two commenters add that banning fly ash use, thereby requiring cement manufacturers to use substitutes for raw materials, cannot be used as the basis of a national rule due to the variability of mercury content of fly ash. These commenters also state that banning the use of fly ash could result in power companies having trouble finding ways to manage fly ash that would not increase impacts on land use and other ecosystem values. These commenters state that further study of such trade-offs is necessary.

Another commenter notes that approximately 2.5 million tons of fly ash is used annually in cement kilns, thus reducing the need for an equivalent amount of natural materials that would come from virgin sources. Another commenter notes that some configurations of coal-fired electric generating unit control equipment can reduce the level of ash-bound mercury, and that research is being conducted on methods that capture and stabilize mercury, producing a secondary waste product separate from the ash stream.

One commenter adds that the costs of replacing fly ash with other materials could be in excess of $10 million per ton of mercury removed. This commenter also states that the use of some alternate materials could result in emissions of HAP, including mercury, and increased emissions of criteria pollutants either directly or as the result of increased fuel usage per ton of clinker produced. One commenter agrees with EPA that fly ash from electric utility boilers may progressively contain more mercury as the electric utility industry reduces its mercury emissions. According to the commenter, some boiler fly ash is of a quality that allows it to be added directly as a raw material for concrete where most of the mercury is permanently bound; lower quality fly ash is unusable in concrete and instead is added as a raw material additive to the cement kiln. This commenter, however, recommends that EPA consider work practices, monitoring, and mercury controls rather than a ban on fly ash.

Two commenters state that data from TRI showing that 64 percent of kilns not using fly ash account for 60 percent of mercury emissions, while the 36 percent that do use fly ash account for about 40 percent of mercury emissions, do not justify a conclusion that fly ash feedstock from utility boilers that control mercury is a culprit in mercury emissions from cement kilns.

Two commenters, citing EPA's positing that wet kilns may emit more mercury than dry kilns, suggest that the driver for mercury emissions from kilns may be the type of kiln rather than the feedstock.

Two commenters note that EPA acknowledges that the proposed ban fails to consider the solid waste and economic impacts of diverting 2–3 million tons/yr from beneficial use to disposal in landfills, including the economic impacts of lost revenue from the sale of fly ash, landfill disposal fees, and the potential rate increases for electricity consumers; and the environmental impacts of relying on virgin feedstock—which contains mercury as well as organic compounds—including increased energy use, additional air emissions, and impacts on natural resources.

One commenter states that there are many advantages (a list of the environmental and energy benefits is included as part of the comment) associated with the use of fly ash as an alternative for some naturally occurring raw materials. The commenter states that they also understand the impacts that the use of fly ash may have on mercury emissions and are looking at approaches that may be used to minimize mercury emissions from use of fly ash. They state that they will provide additional information on a preferred approach should one be identified.

One commenter opposes a blanket ban on use of fly ash without regard to its source or the use of analysis to determine mercury content. The commenter agrees that setting mercury emission limits is inappropriate given the variability in concentration in raw materials and that it would be contrary to case law under CAA section 112. The commenter lists the manufacturing and environmental benefits of using fly ash as a substitute for other raw materials: reduced fuel consumption in kiln; reduced power consumption for grinding; reduce emissions of organics (THC) and combustion emissions (NO_X, SO_2, and CO); reduce need to dispose of fly ash; and reduced SO_2 emissions from reduced use of raw materials containing pyrites. The commenter states that in some regions, fly ash is the only source of aluminum for some cement plants. Also, they state that like other raw materials, the mercury content of fly ash can vary widely. The commenter recommends an approach that allows the use of fly ash if companies can demonstrate that mercury emissions will not be significantly impacted. Such an approach is being developed by the commenter and will be submitted to EPA as a supplement to their comments.

Response: We have considered the comments above and have come to the conclusion that a ban on the current use of utility boiler fly ash is not warranted. See section I.A.1.b above.

Comment: Several commenters are opposed to allowing the use of fly ash if it means increased mercury emissions. One commenter cited a study showing that fly ash mercury content can vary from 0.005 to 120 micrograms

per cubic gram of ash as evidence that EPA needs to limit the use of fly ash in cement and should also evaluate other additives, including cement kiln dust, for their mercury emissions potential. One commenter states that if the mercury in fly ash will cause the fly ash to be classified as a hazardous waste, its use should be banned until the fate of mercury in the cement manufacturing process is better understood.

One commenter states that EPA should take into consideration future increases in the mercury content of coal combustion products (CCP) resulting from the Clean Air Interstate Rule and the CAMR. They state that the higher mercury content of CCP used in producing Portland cement as well as the recycling of cement kiln dust could cause mercury emissions to increase.

Several commenters understand that fly ash is a necessary component in the manufacturing process, but believe measures should be implemented to avoid increased mercury emissions. One commenter recommends the use of fly ash as long as control requirements are included in the rule, e.g., work practice standards and other strategies to prevent an increase in mercury emissions from the fly ash. One commenter states that EPA should require either: (1) Carbon injection with fabric filtration without insufflation; or (2) treatment of the ash to remove and capture the mercury. According to the commenter, if these do not adequately reduce mercury emissions, the fly ash should not be used. Another commenter states that EPA should include provisions for pollution prevention plans, in which monitoring and testing of mercury sources are conducted and appropriate work practices or other measures are evaluated and implemented to control mercury emissions. The commenter states that the facility can then determine the least cost approach for achieving mercury reductions.

One commenter states that EPA needs to further investigate the practice of adding fly ash to understand the concentration of mercury being added and subsequent emissions of mercury. The commenter states that if alternatives are available, EPA should consider banning the use of fly ash.

Response: We received comments both for and against the use of utility boiler fly ash. As previously noted in this notice, we performed our own evaluation of the practice based on the available data. The result of our analysis was that even though we are aware of one facility where the use of fly ash contributes to approximately half of the facility's mercury emissions, we cannot state that this occurs at other cement kilns using fly ash. We also note numerous positive environmental effects of using fly ash in lieu of shale and clay, including increases in overall kiln energy efficiency, and a potential reduction in THC emissions. Given the lack of data that the use of fly ash adversely affects mercury emissions (i.e. causes an increase in emissions over raw materials that would be used in place of the fly ash) other then at one facility, and the other positive environmental benefits, we do not believe any action is warranted on fly ash use as currently practiced in the industry.

The commenters also expressed concern that as utility boilers apply ACI or other sorbents to reduce their mercury emissions, utility boiler fly ash will have significantly increased mercury concentrations, likely well in excess of levels in clay and shale that would be used in its place. We agree with this concern. As previously noted the available data indicate that ACI (or other sorbent) can significantly increase fly ash mercury content. For this reason, we have added a provision in the final rule to ban the use as a cement kiln feed utility boiler fly ash whose mercury content has been artificially increased through the use of sorbent injection, unless it can be shown that the use of this fly ash will not increase mercury emissions over a cement kiln's raw material baseline.

Comment: Regarding EPA's decision to not set HCl standards for existing kilns, a commenter states that EPA's action is unlawful, contemptuous of court, and arbitrary for all of the reasons cited above by the commenter in their comment on EPA's action on the mercury rule. In addition, the commenter also finds EPA's proposal regarding HCl unlawful and arbitrary for the following reasons.

The commenter states that EPA asserts that it ''reexamined'' the MACT floor for existing sources whereas the court directed EPA to ''set'' HCl standards. Thus, according to the commenter, EPA's stated reason for not setting HCl standards for existing kilns (the number of kilns equipped with scrubbers is insufficient to constitute 12 percent of the kilns) is irrelevant. According to the commenter, the approach EPA is required to take is to average the emission levels with those of the other best performing sources to set the floor. The commenter states that such a level would not reflect the performance of scrubbers, rather it would reflect the level achieved by the best performing sources as required by the CAA. The commenter states also that EPA's reasoning that the unavailability of low-chlorine feed or fuel justifies a decision not to set HCl standards for existing kilns is irrelevant, because EPA has an unambiguous legal obligation to set floors reflecting the HCl emission levels achieved by the relevant best performing kilns.

One commenter states that in setting work practice standards for HCl, EPA did not satisfy the CAA criteria that apply when it is ''not feasible to prescribe or enforce an emission standard.'' The commenter states that a work practice standard is unlawful because EPA did not and could not claim that: (1) HCl cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant or that such conveyance would be inconsistent with any existing law; or (2) the application of measurement methodology is not practicable due to technological and economic limitations.

Response: The comment is moot. EPA is not requiring section 112(d) control of HCl emissions since emissions of this HAP from cement kilns will remain protective of human health with an ample margin of safety and will not result in adverse effects on the environment, even under highly conservative worst case assumptions as to potential exposure. See section IV.B above, and CAA section 112(d)(4). The court's opinion does not address the possibility of using the section 112(d)(4) authority on considering technology-based standards for HCl and EPA's use of that authority violates nothing in either the letter or spirit of the court's mandate.

Comment: Two commenters took issue with EPA's proposed definition of ''new'' sources as it applies to the proposed HCl limits for new kilns. Regarding EPA's new source standards for HCl (15 ppmv or 90 percent HCl reduction), one commenter states that EPA has created a compliance loophole for kilns that commenced construction before December 2, 2005 and is unlawful. According to the commenter, the CAA defines new source where construction or reconstruction commenced after the Administrator ''first'' proposes regulations. The commenter states that EPA first proposed standards on March 24, 1998, and that any kiln at which construction or reconstruction was commenced after March 24, 1998, is a new source and must meet new source standards. The commenter states that EPA ignores that its violation of a clear statutory duty, (i.e., its failure to promulgate HCl standards in the 1998 rulemaking), is the reason that sources built after March 24, 1998, have not already installed

pollution controls necessary to meet new source HCl standards.

Response: We disagree with these comments. First, the comment is moot with respect to an HCl new source standard because, based on the authority of section 112(d)(4), EPA has determined that no such standard is required because emissions will be at levels which are protective of human health with an ample margin of safety, and will not have an adverse effect on the environment. However, the same issue of the applicability date for new sources is presented for mercury and THC, so we are responding to the comment.

The whole premise of new source standards being potentially more strict than for existing sources, and requiring new sources to comply immediately with those requirements (see section 112(d)(3) (new source floor criteria are more stringent than those for existing sources) and 112(i)(1)), is that these sources are being newly constructed and hence can immediately install the best pollution controls without incurring the time or the expense of retrofitting. Put another way, new sources know from the beginning of the construction effort what controls will be required, and do not have to incur the higher costs and the time-consuming disruptions normally associated with control retrofits. If we were to require ''new sources'' that commenced construction prior to December 2, 2005, to retroactively install controls because we have changed rule requirements, then these particular sources would have to bear retrofit costs that we do not believe were intended by the CAA. Immediate compliance would also be an impossibility.[16]

The commenter states that the statute mandates this result because a new source is defined as a source constructed or reconstructed after the Administrator ''first proposes'' regulations ''establishing an emission standard'' applicable to the source. The commenter thus concludes that the new source trigger date must be March 24, 1998, the proposal date of the 1999 rule. This reading makes no sense in the context of a court action which essentially required EPA to reexamine the entire issue, and re-determine what the standard should be. Under such circumstances, the only reasonable date for determining new source applicability for a resulting standard would be the date EPA proposes it. Moreover, even under the commenter's (strained) reading, EPA did not propose standards for mercury, hydrocarbons, or HCl for these sources in the 1998 proposal until December 2, 2005; this is why the rule was remanded by the D.C. Circuit.[17] Hence, for the HAP covered by this rule, the new source trigger date would be December 2, 2005, even under the commenter's reading. However, we repeat that we disagree with the commenter's interpretation because it results in situations antithetical to the underlying premise of a new source standard: namely that amendments to new source standards will result in existing sources having to comply immediately with both new source standards and immediate compliance dates. This would be both unfair and impossible. Congress simply cannot have intended this result.

Comments: Regarding the proposed work practice standards for existing kilns (operate at normal operating conditions and operate a particulate control device), one commenter states that there is not enough information to require ''normal operating conditions'' for kilns and air pollution control device. According to the commenter, ''normal'' kiln conditions may not be best for HCl removal. This commenter also states that existing operating & maintenance (O&M) and start up, shut down, and malfunction (SSM) plans already ensure normal operation. Other commenters state that this proposed work practice is arbitrary as there is no ''normal operating condition'' for all kilns in the U.S. The commenters state that a multitude of factors—combustion parameters, kiln design, raw material inputs, fuel characteristics, etc—make this requirement unworkable.

One commenter notes that 40 CFR 63.6(e) already requires plants to minimize emissions during an SSM event to the extent consistent with good air pollution practices and with safety considerations. The commenter states EPA should clarify that the proposed requirement to continuously operate kilns under normal conditions and operate a particulate control device is subject to the SSM provisions elsewhere in the NESHAP (section 63.6(e)). The same commenter later submitted another comment restating their position on HCl that standards for existing and new kilns are not necessary and do not represent the MACT floor.

Response: This comment is also moot given EPA's decision not to set a section 112(d) standard for HCl based on the authority of section 112(d)(4) of the CAA.

Comment: One commenter states that EPA has not demonstrated that it has examined the costs associated with alkaline scrubbers in establishing a MACT floor for new sources. The commenter states that EPA's scrubber costs are not representative of a wet scrubber that can meet limits of up to 90 percent control of SO_2. According to the commenter, EPA's cost are for dry or wet lime spray systems incapable of 90 percent reduction on preheater/precalciner kilns. The commenter provides capital and annualized costs for a 1 million tpy kiln of $18 to $25 million and $4.5 to $7 million, respectively. The commenter states that using EPA's range of 12 to 200 tpy of HCl removal, this translates to a cost of between $35,000 and $375,000 per ton of HCl removed. The commenter states that this range is higher than the range EPA considered unreasonable for existing kiln beyond-the-floor controls ($8,500 to $28,000 per ton removed). The commenter concludes that wet scrubbers are not a reasonable option.

The commenter adds that dry or wet lime spray systems can remove SO_2 prior to the raw mill but essentially perform the same function as the raw mill, and therefore achieve an incremental removal efficiency far below 90 percent. The commenter states that this would be less cost effective than EPA described for existing kiln beyond-the-floor technology.

Response: This comment is also moot in relation to HCl given EPA's decision not to set a section 112(d) standard for HCl based on the authority of section 112(d)(4) of the CAA. However, it now has relevance in regards to the costs of controlling mercury emissions because we evaluated wet scrubbers for mercury control from existing sources as a beyond-the-floor option and new sources as a floor option. We did further investigation of the potential costs of alkaline (wet) scrubbers and revised our cost estimates after proposal based on data developed as part of the Industrial Boiler NESHAP. The scrubber costs are based on alkaline scrubbers specifically designed to remove HCl and/or SO_2 from a coal-fired boiler and we have made the required adjustments in cost to account for differences in the flue gas

[16] As it happens, under this rule, the compliance date for sources which [0] commenced construction after December 2, 2005, and before promulgation of this final rule is 3 years because the standards adopted are more stringent than those proposed on December 2, 2005. See CAA section 112(i)(2). However, the same issue will arise should EPA adopt revised standards as a result of the periodic review mandated by section 112(d)(6). There is no indication that Congress intended the draconian result of sources constructed at the time of the initial MACT rule (which could be decades in the past for a section 112 (d)(6) revised standard) to be considered new sources.

[17] Greenfield cement kilns, for which EPA adopted a new source standard for THC in 1999, are a separate type of new source for purposes of this analysis.

characteristics of a cement kiln versus a coal-fired boiler.

Comment: One commenter states that EPA's proposed risk-based exemptions from HCl standards are unlawful, arbitrary and capricious. On the proposal to develop a single national risk-based HCl standard based on the RfC for HCl the commenter states no national risk-based HCl standard exists making it impossible to comment effectively on any provisions in the cement rule that might rely on a hypothetical future rulemaking. The commenter continues stating that any attempt to set risk-based standards on a national rule that does not exist and is not currently available for review, would contravene the CAA notice and comment requirements. The commenter states further that 112(d)(4) allows EPA to set health-based emission standards only for those pollutants for which a health threshold has been established, and that no cancer threshold has been set for HCl (nor is there any classification of HCl with respect to carcinogenicity and none exists). Also, the commenter states that no non-cancer threshold has been set for HCl and that the integrated risk information system (IRIS) RfC, on which EPA attempts to rely, does not purport to be an established threshold. According to the commenter, disclaimers in IRIS negate any notion that it provides an established threshold for HCl.

Response: We largely disagree with these comments. Section 112 of the CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Of relevance here, section 112(d)(4) effectively allows us to consider risk-based standards for HAP ''for which a health threshold has been established'' provided emissions of the HAP are at levels that provide an ''ample margin of safety.'' Therefore, we believe we have the discretion under section 112(d)(4) to develop standards which may be less stringent than the corresponding technology-based MACT standards for some categories emitting threshold pollutants, or not to set a standard if it is apparent that emissions from the source category (i.e. from any source in the category, or any potential new source) would remain protective of human health and the environment with an ample margin of safety and protective of the environment.

The data are inadequate to make a determination as to whether HCl is carcinogenic in either humans or animals, so EPA has not developed an assessment for carcinogenicity of HCl.

The IRIS noncancer assessment for HCl provides a RfC for inhalation. An RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure of the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.

The existence of a threshold for noncancer effects of HCl is established by general toxicological principles, i.e., that organisms are able to repair some amount of corrosive tissue damage of the type caused by HCl. If the damage does not exceed an organisms' ability to repair it, then no adverse effects will occur. Although the underlying data for HCl did not identify subthreshold exposures for chronic effects, this was due to experimental design issues rather than the absence of a threshold. EPA is unaware of any studies, theory, or experts that suggest HCl does not have a threshold for adverse effects.

Comment: Two commenters submitted comments on the need for HCl standards. According to the commenters, based on a risk analysis using 14 preheat/precalciner kilns at 13 cement plants using a range of in-stack HCl concentrations as well as a sensitivity analysis using higher hazardous waste kiln HCl concentrations, risks are well below the short-term and long-term thresholds. Based on this minimal risk, the commenters state that there is no need for an HCl standard for new kilns or the proposed operational standard for existing kilns. The commenters state that additional data will be submitted to demonstrate that there is minimal risk and no need for HCl standards.

As stated in its comments on the original proposal, one commenter states that a standard for HCl is not warranted for either existing or new sources. Since the close of the previous comment period, the commenter conducted a study to evaluate the long term and short term health risks of HCl emissions from 112 kilns at 67 plants. According to the commenter, risks were assessed using EPA modeling guidance and conservative modeling assumptions. The commenter states that based on their analysis, both chronic and acute risks are below acceptable levels and that none of the kilns studied have the potential to generate HCl emissions that result in air concentrations exceeding EPA's RfC threshold for chronic health effects or Cal EPA's reference exposure level threshold for acute effects. Based on these results, the commenter states that there is no justification for an HCl standard for new or existing cement kilns. The commenter included a copy of the health risk analysis with their comments. Another commenter refers to the above information submitted by another commenter that risks to health from HCl are well below levels acceptable for both chronic and acute impacts.

Response: As discussed in section IV.B above, we have reviewed the risk analysis provided by the commenter and agree that additional control of HCl is not required.

Comment: Regarding emission standards for THC, one commenter states that although EPA has proposed limits, they have not set standards for the main kiln stack at existing sources and new sources at existing plants. The commenter states that EPA's position on THC standards is unlawful, contemptuous of court, and arbitrary for the same reasons given by the commenter above regarding EPA position on mercury standards (see above). The same commenter in a later submission, states that the preamble to the proposed rule appears to indicate that EPA did not set emission standards for THC emissions from the kiln's main stack, although the regulatory text does specify emission limits for the kiln's main stack.

Response: Since EPA is setting standards for THC (as a surrogate for non-dioxin organic HAP), and also proposed to do so, this comment is not factually accurate (and, as noted in earlier responses, mischaracterizes the court's mandate in any case). In addition, as previously discussed, we do not agree with the commenter that the court's mandate required us to set standards regardless of the facts. The court noted that we had inappropriately limited our analysis to add-on back end control technologies. As is the case with mercury and HCl, setting some type of emission limits based on test data would mean that many facilities would have to apply a beyond-the-floor add-on control technology to meet the floor level of control without consideration of the costs, energy, and non-air health and environmental impacts.

Comments: One commenter states that EPA has improperly borrowed standards from its 1999 regulations for hazardous waste combustors, which were found unlawful and vacated [18] rather than setting standards that reflect the THC or CO emission levels actually achievable by the best performing sources (12 percent of cement kilns for existing and best performing cement kiln for new). The commenter states further that although maintaining good combustion

[18] This is incorrect; the THC rules for hazardous waste incinerators/cement kilns/lightweight aggregate kilns were not challenged and were therefore not vacated by the D.C. Circuit. See *CKRC*, 255 F.3d at 872.

conditions affects THC emissions, it is not the only factor that does so and cites the plants' selection of raw materials as affecting THC emissions. The commenter states that EPA's new greenfield source standard reflects that use of low organic feed materials affects THC emissions and also cites statements by Florida DEP and Holcim that selection of feed materials can affect THC emissions. The commenter states that EPA admits that add-on controls, e.g., ACI and scrubber/RTO (in use on two kilns), as well as precalciner/no preheater technology reduce THC emissions. According to the commenter, because these other factors can affect THC emissions, EPA has incorrectly set the floor based on good combustion control only. The commenter states that EPA concedes that cement kilns may be able to achieve better THC emission levels than through the use of good combustion alone when it discusses in the proposed rule that nonhazardous waste cement kilns should be ''less challenged'' than hazardous waste kilns in meeting the proposed limits and that the ''lack of any hazardous waste feed for a non-hazardous waste (NHW) cement kiln should make it easier to control the combustion process.'' The commenter states that EPA did not account for the fact that nonhazardous waste burning kilns can control their combustion conditions and thus THC emission more easily than hazardous waste burning kilns, instead just borrowing the standard for hazardous waste burning kilns without attempting to show that the proposed limits reflect what is actually achievable by the relevant best performers. According to the commenter, EPA's arguments that it does not have to consider factors other than good combustion were rejected by the court as irrelevant and EPA must set the THC limits reflecting the average emission level that the best sources actually achieve.

Response: In the original NESHAP, we noted that THC emissions were primarily a function of the organic materials in the kiln feed. As we have previously discussed, a facility has a starkly limited ability to change their raw materials to reduce their organic content. The fact that individual facilities have successfully reduced organic contents of their feed materials to reduce THC emissions does not indicate that this option is available to all facilities. Therefore, we cannot use this option as the basis of a national standard for existing facilities.[19]

For new greenfield facilities we established in the 1999 rule that a facility would have the option to site the quarry at a location with low enough organic content that they could meet a 50 ppmv THC emissions limit. We determined that this was feasible because two facilities had already done so at the time we promulgated the original NESHAP. This limit was not remanded by the court and is currently in effect.

As we have previously discussed, we do not agree that the court decision compels us to set a THC standard that will require some sources to install a beyond-the-floor control technology under the guise of a floor standard. These facts have not changed from the original NESHAP.

However, at proposal we noted that facilities could control THC resulting from combustion of fuel.[20] We explained that the basis of the MACT floor for cement kilns firing hazardous waste was also good combustion, and these kilns had established limits for THC as a quantitative measure of good combustion conditions. Given the fact that both classes of kilns were using the same method of control, we proposed to apply the same limits to kilns that did not burn hazardous waste. We have no data, and none were supplied by the commenter, to make any judgments about whether or not kilns that do not burn hazardous waste could actually meet a more stringent standard. Because the standards are based on complete combustion of the fuel, and because of the extremely high temperatures in the end of the kiln where the fuels are introduced (both those that burn hazardous waste and those that do not), we believe that both types of kilns should achieve comparable complete destruction of organic materials present in the fuels under normal operating conditions reflecting good combustion. Simply because we state that controlling THC emissions from kilns that do not burn hazardous waste should be less difficult than controlling emissions from kilns that do burn hazardous waste does not imply that one type of kiln can achieve a measurably lower THC emission level than another.

Comments: Several commenters state that it is inappropriate to set THC floor limits based on a different source category, i.e., HWC. According to the commenters, at issue is the control of products of incomplete combustion (PIC) vs. control of hydrocarbons from feed materials. They state that HWC have the option ceasing to burn hazardous waste when exceeding the limit (and can do so easily using automatic waste feed cutoff systems) and that the HWC THC standard only applies when hazardous waste is being burned.

Three commenters state that the HWC MACT standards were based on EPA's RCRA Boiler and Industrial Furnace rules, which in turn were based on the need to safely manage hazardous waste, a need that is irrelevant to the facilities covered under the current proposal.

Response: We agree with this comment and have removed the proposed quantified limits for existing sources. We have not removed the limit for new sources because the basis of the new source floor (and standard) is performance of a RTO (preceded by a scrubber to enable the RTO to function). Application of an RTO (in series with a scrubber) would allow new cement kilns to meet a 20 ppmv standard, or to remove 98 percent of incoming organic HAP measured as THC.

Comment: Three commenters state that EPA has no empirical data demonstrating that any NHW kiln can achieve the proposed limits on a continuous basis. One commenter states that bench scale studies estimated that for varying organic levels, 47 percent of samples would have resulted in emissions that exceed the 20 ppmv limit.

Response: We agree with this comment and have removed the proposed limits for existing sources. We have not removed the limit of new sources because the basis for the new source floor is now the performance of a RTO. Application of an RTO would allow the facilities noted in the comment to meet a 20 ppmv standard.

Comment: Three commenters state that the contribution to THC/CO from raw materials outweighs the measure of THC/CO for good combustion of hazardous waste fuels. Thus, THC and CO are not useful indicators of good combustion. One commenter notes that available information shows that it is difficult to correlate HC and HAP emissions. The commenter further states that several studies show that neither THC nor CO is a reliable surrogate for good combustion or PIC or HAP emissions. According to the commenter, HC emissions are a function of: (1) Raw material organic content; (2) source of fuel and firing location; (3) temperature profile; (4) oxygen concentration; and (5) type of manufacturing process. One

[19] EPA could subcategorize each source based on its raw material organic content (each source being a different ''type''), but rejects this alternative as being a paper exercise not producing environmental benefit.

[20] Fuel organics can be controlled because they are fed into the hot end of the kiln. Feed materials are fed into the other end of the kiln and therefore have the opportunity to vaporize and leave with the exhaust gas before they reach the portions of the kiln which are hot enough to combust them.

commenter states that the high temperatures required for the formation of cement clinker (>2700F) ensure as complete combustion of fuels as is possible.

Response: We agree with the comment that because organic contributions from processing raw materials is the chief contributor to measured THC levels (since such emissions are not combusted and hence are not largely destroyed), having a quantified limit for THC as a measure of good combustion is not appropriate for existing cement kilns that do not burn hazardous waste. We disagree with the more general statements regarding the appropriateness of a THC indicator for organic HAP, and indeed are continuing to utilize THC as an indicator for new sources. As noted in the proposal of the original NESHAP, the organic HAP component of THC emissions varies widely (63 FR 14196). However, THC emissions do contain organic HAP. Applying MACT to THC emissions will also control organic HAP, but will be less costly than attempting to set individual limits for each individual organic HAP (64 FR 31918).

We also agree with the comment that combustion conditions in the hot end of the kiln where fuels are fired should assure destruction of organics (including organic HAP) in the fuel. For this reason, we adhere to our position at proposal that good combustion conditions in the cement kiln should assure destruction of organic HAP in fuel and represents the measure of best performance for reducing emissions of organic HAP from existing cement kilns. As explained in section I.C above, we have chosen a different means of expressing good combustion conditions than the quantified THC limit which we proposed.

Comment: Three commenters state that it is inappropriate to apply limits for non-dioxin organic HAP when feed materials have varying levels of organics, which EPA acknowledges by setting THC limits only for new greenfield sources (EPA also applied variability of feed/fuel materials in justifying rules or lack of rules for mercury, HCl and non-mercury metals). Two commenters add that a Reaction Engineering study shows that organics emitted from kiln feed is extremely variable across the country with levels varying by over four orders of magnitude.

Response: We agree with these comments and have made appropriate changes in the final rule to the proposed floor for existing cement kilns' non-dioxin organic HAP emissions to account for the essentially uncontrollable variability in organic HAP levels in raw materials.

Comment: A commenter states that EPA failed to consider the reduction in THC as part of the beyond-the-floor analysis of ACI. According to the commenter, organic HAP potentially controlled by ACI include polychlorinated biphenyls, polycyclic organic matter, and polyaromatic hydrocarbons. According to the commenter, to determine the maximum degree of reduction in THC emissions that is achievable for cement kilns, the CAA requires that EPA evaluate the reductions achievable through the use of ACI.

One commenter states that: (1) EPA did not determine, as required by the CAA for beyond-the-floor standards, the maximum degree of reduction in THC emissions achievable through GCP; (2) EPA did not show that its standards reflect the maximum degree of reduction achievable through combustion controls in light of its findings that NHW burning kilns should be able to achieve the THC standards more easily than hazardous waste burning kilns; (3) EPA did not determine the maximum degree of reduction achievable through the judicious selection of raw materials although they acknowledge that such methods will control THC emissions and that kilns are already using it and can control THC emissions through the use of other materials such as fly ash and kilns can and do import raw materials from sources that are not co-located or immediately nearby; (4) EPA did not determine the degree of reduction achievable through the use of end-of-stack controls already in use in the cement industry, including ACI, which EPA only considered for mercury and dioxin control and which would reduce THC emissions significantly and also reduce mercury and dioxin emissions;[21] (5) EPA failed to determine the maximum degree of reduction achievable through the use of limestone scrubber/RTO even though the agency is aware that such devices can significantly reduce emissions of THC (as well as HCl) and are already in use in the industry and does not contend that they are too expensive; and (6) EPA failed to consider or determine the maximum degree of reduction achievable through the use of a carbon coke filter system such as the Polvitec system in use at Holcim's Zurich plant. For the reasons (1–7) listed above, the commenter states that EPA's beyond-the-floor analysis for THC contravenes CAA 112(d)(2) which requires that EPA's final standards reflect the maximum degree of reduction achievable through any and all reduction measures, and any claim that EPA's THC standard reflects the maximum achievable degree of reduction would be arbitrary and capricious in light of EPA's failure to consider these technologies or explain its decision not to base beyond-the-floor standards on any or all of them.

Response: We have no actual test data to establish the impact of ACI on THC emissions, but are using a figure of 50 percent, which reflects the best estimates of the one facility using ACI for organics control. As explained in section IV.C above, the facility in question is extremely unusual in that the uncontrolled THC emission levels are much higher than any other facility in the source category, so the 50 percent reduction figure is probably more efficient than would be achieved industry-wide. As explained in section IV.A.2 above, however, even assuming this degree of reduction, we did not find a beyond-the-floor option based on performance of ACI to be achievable within the meaning of section 112(d)(2).

The commenter also stated that we did not assess the maximum degree of THC reduction achievable by optimized combustion practices. There are no data available to perform this type of analysis and none were provided by the commenter. Moreover, THC levels significantly below those associated with good combustion conditions are not necessarily indicative of further organic HAP reductions. See discussion at 70 FR 59462–59463 (October 12, 2005).

We also did not evaluate the degree to which ''judicious selection'' of raw materials can be used to reduce THC emissions, except that we have previously established that a greenfield facility can limit THC emission to 50 ppmv by selection of limestone with sufficiently low organic materials contents. We are aware that cement production facilities can import some raw materials from sources other than those nearby. However, the fact that in some cases materials can be imported from a farther distance does not change the fact that each individual cement facility has specific raw materials needs based on their particular limestone and other raw materials. We do not have data, nor are data available, to develop a national rule that would cover every possible raw material substitution to reduce THC emissions.

The commenter also stated we did not assess the maximum degree of emission

[21] Since the rule already contains a standard for dioxin, incremental reductions attributable to use of ACI are quite small; see section IV.a.2 above.

reduction achievable through the use of end-of-stack controls. However, as previously discussed, there are no data available for us to perform this analysis for any controls other than an RTO. In the case of an RTO, we have evaluated its performance as a beyond-the-floor control for existing sources. In that case, we determined requiring a facility to apply an RTO as a beyond-the-floor option was not achievable, within the meaning of section 112(d)(2), due to the high costs and adverse energy utilization impacts. The new source standard for THC is based on performance of an RTO (in tandem with a scrubber), as discussed previously. We do not believe any further control is technically feasible.

The commenter also stated we had not considered the use of a carbon coke system. The source for this comment notes that there was one facility in Europe. We note the plant in question was designed to burn pelletized sewage sludge. The source of the comment does not indicate the performance or costs of this system. We assume it would perform similarly to a carbon adsorption system, which achieves emission reductions similar to those of an RTO. We believe that the wet scrubber/RTO system, which is demonstrated on a cement kiln in the United States, is a viable beyond-the-floor option. Given the lack of demonstration of a carbon coke filter in this country, the fact that we have a viable alternative as a beyond-the-floor option (an RTO), and the fact that the carbon coke filter is unlikely to perform any better than an RTO, we do not believe consideration of a carbon coke filter is warranted.

Comment: Several commenters oppose EPA's proposed regulation of area sources for THC. Three commenters state that there is no legal basis for regulating area sources. The commenters note that there is no ''statement of basis and purpose'' as required by CAA 307(d)(3).

One commenter recommends that EPA exempt area sources, which would experience the same cost as major sources with fewer benefits; or consider less stringent options, e.g., periodic stack test rather than CEM.

Response: As previously noted, in the original 1999 NESHAP for this source category we regulated THC emissions from area sources because the THC emissions from a cement kiln are likely to contain polycyclic organic matter. This pollutant is listed in section 112(c)(6) of the CAA as a pollutant. The commenter provided no data that would lead us to change this determination (63 FR 14193–94).

We also considered requiring periodic stack tests rather then THC CEM. However, the current rule already requires kilns at greenfield area sources to install a THC CEM. We could see no justification for allowing a more lenient THC monitoring option for new kilns at non-greenfield facilities.

Comment: One commenter states that the requirement for THC CEM will impose additional cost for no benefit. The commenter recommends that EPA eliminate numerical limits or require less costly monitoring options, e.g., periodic stack testing. The commenter recommends that if EPA does require CEM, extend the compliance date to at least 2 years because the State certification process requires more than 1 year.

Response: We have not adopted a requirement that existing sources install a THC monitor. For new sources, the compliance date is ordinarily the effective date of the rule or startup, whichever is later. See section 112(i)(1). However, in this case, because the new source standard is more stringent than proposed (see discussion in section IV.C.3 above), sources which commenced construction or reconstruction after December 2, 2005, but before December 20, 2006, will have until December 21, 2009 to comply. See section 112(i)(2).

Comment: Two commenters favor including all crushers in the Portland cement NESHAP and establishing emission limits for crushers based on the requirements in 40 CFR, subpart OOO, if they satisfy the requirements of the CAA. One commenter cites State requirements for primary crushers of 10 percent opacity, work practices, and a baghouse with outlet concentration of 0.01 grams per dry standard cubic feet; secondary crushers are subject to a 20 percent opacity limit. The commenter provided a copy of their State requirements for crushers at cement manufacturing facilities.

One commenter states that applicability based on location relevant to other sources is confusing and recommended that EPA put all appropriate requirements for the sources in one requirement and remove 63.1340(c) altogether.

Response: We agree that applicability based on location relevant to other sources is confusing. However, in our final determination on this issue we decided that crushers should not be covered under this NESHAP. The reasons are first, we have no definitive information that there are any facilities that currently have crushers after raw materials storage. Second, we have no data to set a floor for existing crushers that might potentially be covered. We considered using the current Nonmetallic Mineral NSPS, which established standards of performance for new crushers. But we have no data to determine if the NSPS for this source category would be an appropriate MACT floor. Finally, we believe we can resolve the issue by simply stating that crushers are not covered by this regulation. It was never our intent that this rule regulate equipment typically associated with another source category.

Comment: One commenter states that all of the raw material handling and storage, except crushing, should be covered by the Portland cement NESHAP. They state that the only non-metallic mining activities subject to the NSPS subpart OOO are at the quarry and at the crusher. The commenter states that under the alternative interpretation offered by EPA, several steps characteristic of cement manufacturing would not be included in subpart LLL, for example the ''on-line'' measurement devices such as cross-belt neutron analyzers that are used in the preblending and proportioning steps. The commenter states further that the raw mix fed to the raw mill is the product of the very careful instrumentally-aided proportioning and blending operation that is one of the most important series of steps in the cement manufacturing process.

Response: We agree with this comment.

VII. Summary of Environmental, Energy, and Economic Impacts

A. What facilities are affected by the final amendments?

We estimate that there are approximately 94 cement plants currently in operation. These 94 plants have a total of 158 NHW cement kilns. We estimate that 20 new kilns with a capacity of 20,900,000 tpy of clinker capacity will be subject to the final amendments by the end of the fifth year after promulgation of the amendments. Note that national impacts are based on the estimated capacity increase, not on a specific number of model kilns.

B. What are the air quality impacts?

For existing kilns, we estimate that the impacts of the amendments will essentially be zero because we believe that all existing kilns are already performing the work practices prescribed in the amendments. For the 20 new kilns the variation in mercury and hydrocarbon emissions from kilns makes it difficult to quantify impacts on a national basis with any accuracy.

For mercury emissions we estimate a new kiln with a capacity of 650,000 typ of clinker will have an emission reduction ranging from zero to 280 lb/yr. We estimate the national mercury emissions reduction to be 1300 to 3000 lb/yr in the fifth year after promulgation.

Reported hydrocarbon emission test results range from less than 1 ppmv dry basis (at 7 percent oxygen) to over 140 ppmv dry basis (Docket A–92–53) measured at the main kiln stack. For 52 kilns tested for hydrocarbon emissions (Docket A–92–53), approximately 25 percent had emissions of hydrocarbons that exceeded the 20 ppmv THC limit at the main stack. The average hydrocarbon emissions for the kilns exceeding 20 ppmv was 62.5 ppmv. Assuming that most new kilns will be sited at existing locations this would imply that 15 out of 20 new kilns will have no THC emissions reduction as a result of the THC Standard. For a new kiln that, in the absence of the standard, would emit near the average hydrocarbon level of 62.5 ppmv, the application of new source MACT consisting of an RTO would result in a reduction of about 196 tpy for a 650,000 tpy kiln. We also estimate that for 15 percent of the new kiln capacity will have uncontrolled emissions that exceed the 20 ppmv limit, but will use alternatives to application of an RTO (such as ACI) to meet the THC emissions limit. These kilns will achieve an emissions reduction of approximately 103 tpy for a new 650,000 tpy new kiln. The total national reduction will be 1100 tpy in the fifth year after promulgation of the standard.

The THC and mercury standards for new sources will also result in concurrent control of SO_2 emissions. For kilns that elect to use an RTO to comply with the THC emissions limit it is necessary to install an alkaline scrubber upstream of the RTO to control acid gas and to provide additional control of PM. We estimate that approximately 25 percent of the additional capacity built in the next five years will have to install wet scrubbers for mercury control, and 10 percent will install a wet scrubber/RTO system for THC control. The SO_2 emissions reductions for a new 650,000 tpy kiln will be approximately 320 tpy, and is estimated as 3640 nationally.

Note that we have determined that reducing SO_2 emissions also results in a reduction in secondary formation of fine PM because some SO_2 is converted to sulfates in the atmosphere. Therefore, the THC standards will also result in a reduction in emissions of fine PM.

In addition to the direct air emissions impacts, there will be secondary air impacts that result in the increased electrical demand generated by new sources' control equipment. These emissions will be an increase in emissions of pollutants from utility boilers that supply electricity to the Portland cement facilities. Assuming two new kilns will install a scrubber followed by an RTO, three will install an ACI system, and five will install wet scrubbers, we estimate these increases to be 105 tpy of NO_X, 47 tpy of CO, 157 tpy of SO_2, and 5 tpy of PM at the end of the fifth year after promulgation.

C. What are the water quality impacts?

There should be no water quality impacts for the proposed amendments. The requirement for new sources to use alkaline scrubbers upstream of the RTO will produce a scrubber slurry liquid waste stream. However, we are assuming the scrubber slurry produced will be dewatered and disposed of as solid waste. Water from the dewatering process will be recycled back to the sc in the form of aqueous discharges, addition of a scrubber will increase water usage by about 41 million gallons per year (gyps) for each new 650,000 tpy kiln that installs a scrubber, or a national total of 460 million gyps.

D. What are the solid waste impacts?

The solid waste impact will be the generation of scrubber slurry that is assumed to be dewatered and disposed of as solid waste, and solid waste from the ACI systems. The amount of solid waste produced is estimated as 519,300 tpy in the fifth year after promulgation of the amendments.

E. What are the energy impacts?

Requiring new kilns to install and operate alkaline scrubbers and RTO will result in increased energy use due to the electrical requirements for the scrubber and increased fan pressure drops, and natural gas to fuel the RTO. We estimate the additional electrical demand to be 41 million kWhr per year and the natural gas use to be 271 billion cubic feet by the end of the fifth year.

F. What are the cost impacts?

The final rule amendments should impose minimal costs on existing sources. These costs will be recordkeeping costs to document CKD wastage. The costs for new sources include the THC monitor and recordkeeping costs for CKD wastage on all new kilns, a wet scrubber for mercury control on five new kilns, and a wet scrubber/RTO on two of the new kilns. The estimated capital cost for a new 650,000 tpy kiln to install a THC monitor is $140,000, to install a wet scrubber is $2.7 million, and to install a wet scrubber/RTO is $10.7 million. For kilns where the uncontrolled THC emissions are below 40 ppmv, we are assuming they will opt for a lower cost THC control, such as ACI. The estimated capital cost for ACI applied to a new 650,000 tpy kiln is $1.0 to $1.6 million. The total estimated national capital cost at the end of the fifth year after promulgation is $64 to $67 million.

The estimated annualized cost per new 650,000 tpy kiln is an estimated as $34,000 to $37,000 for kilns a THC monitor, $470,000 to $597,000 for ACI, $1.4 to $1.5 million for a wet scrubber, and $3.6 to $3.9 million for a wet scrubber/RTO. National annualized costs by the end of the fifth year will be an estimated $26 to $28 million.

G. What are the economic impacts?

EPA conducted an economic analysis of the amendments to the NESHAP which have cost implications. For existing sources the only requirement with any cost implication is the requirement to keep records of CKD wastage. These costs are very small. We assessed earlier Portland cement regulations with greater per source costs, and those costs did not have a significant effect on the cost of goods produced. Since the conditions that produced those conclusions still exist today, EPA believes these new regulations will not have a discernible impact on the Portland cement market for existing sources.

For new sources, both the magnitude of control costs needed to comply with the final amendments and the distribution of these costs among affected facilities have a role in determining how the market will change. The final amendments will require all new kilns constructed on or after December 2, 2005, to install THC monitors. As with existing sources, the cost on a THC monitor is not significant compared to the costs assessed in the earlier regulations. However, the cost for ACI or for the wet scrubbers/RTO systems are significant. We estimate that 3 of the 20 new kilns will have to install ACI, 2 of 20 new kilns will be required to install a wet scrubber/RTO system to meet the limits for THC, and five kilns will install a wet scrubber to meet the new source mercury limits.

Because of the high cost of transportation compared to the value of Portland cement, the market for Portland cement is localized and characterized by imperfect competition. The possible outcomes of the final amendments are either a deferral in

bringing the new kiln into production or a price increase in the immediate region around the two new kilns that face control costs. For perfect competition, control costs at a new facility will be completely passed on in the long run to the purchaser of the good. With imperfect competition the outcome is harder to predict. Less than full cost pass through is a likely possibility.

The model new kilns used in this analysis have a clinker capacity of 650,000 tons/yr. The annual control cost would be up to $597,000 for kilns that apply ACI, $1.5 million for a kiln that applies a wet scrubber, and $3.9 million for a kiln that applies an scrubber/RTO, in 2002 dollars. Clinker is an intermediate good in the production of Portland cement and corresponds to a Portland cement capacity of 720,000 tons/yr. To compare the costs to the value of the Portland cement in 2004 of $85 for a national average mill value we use the Chemical Engineering Plant Cost Index for 2004 and 2002 to get a 2004 annual cost of $640,000 for kilns that require ACI, $1.7 million for kiln that apply wet scrubbers, and $4.4 million for those that apply an scrubber/RTO. The value of the Portland cement produced in a year at the $85 price would be $61 million. If the cost were to be fully passed on to the purchaser in a higher price the price would increase by 1.0 to 7.2 percent, to values of $86 to $91, respectively.

With the increasing demand for Portland cement and the high capacity utilization of existing plants and the nature of the regional markets, it is unlikely that the new kilns would be delayed. Because of the imperfect competition, it is likely in the regions around the two new kilns facing control, the price of the Portland cement would increase but by less than the 1.0 to 7.2 percent that would be required to fully cover the control costs.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

These requirements include records of CKD removal from the kiln system at all existing and new sources, and requirements for new kilns constructed after December 2, 2005, to install and test a continuous monitor to measure THC. We expect these additional requirements to affect 94 facilities over the first 3 years. The estimated annual average burden is outlined below.

Affected entity	Total hours	Labor costs	Total annual O&M costs	Total costs
Industry	4,159	$679,105	$161,672	$840,777
Implementing Agency	213	16,100	NA	16,100

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this information collection request is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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

For purposes of assessing the impact of today's proposed rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by the final rule amendments are small businesses. We determined there are 6 or 7 small businesses in this industry out of a total of 44. Each small business operates a single plant with one or more kilns. The total annualized cost of the standards in the amendments for an existing kiln is

nominal. The revenue for the entire small business sector is estimated to be around $260 million (2003 dollars). New sources, will incur higher costs because new kilns must install a THC monitor, and approximately three of the 20 new kilns will have to install ACI, two will have to install wet scrubbers, and two will have to install a wet scrubber/RTO system for THC control. For new sources that must install controls, the cost of control is estimated to be one to seven percent of the expected revenue from a new kiln. We currently do not have any information on plans for small businesses to build new kilns.

Although the final rule amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final amendments on small entities. The emission standards are representative of the floor level of emissions control, which is the minimum level of control allowed under CAA. Further, the costs of required performance testing and monitoring for non-dioxin organic HAP emissions from new sources have been minimized by specifying emissions limits and monitoring parameters in terms a surrogate for organic HAP emissions, which surrogate (THC) is less costly to measure.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year, nor do the amendments significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Thus, these final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

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

The final rule amendments do not have federalism implications. The final rule amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the proposed rule amendments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to today's action. Thus, Executive Order 13175 does not apply to the proposed rule amendments.

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

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

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

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. These rule requirements will have energy effects due to the energy requirements for the control devices required for new sources. We estimate the additional electrical demand to be 15 million kWhr per year and the

natural gas use to be 270 billion cubic feet by the end of the fifth year. We do not consider these energy impacts to be significant.

I. National Technology Transfer and Advancement Act

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

This final rule involves technical standards. EPA cites EPA Method 29 of 40 CFR part 60 for measurement of mercury emissions in stack gases for new cement kilns.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. The search and review results are in the docket for this rule.

One voluntary consensus standard was identified as an acceptable alternative to an EPA test method for the purposes of the final rule. The voluntary consensus standard ASTM D6784–02, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),'' is an acceptable alternative to EPA Method 29 (portion for mercury only) as a method for measuring mercury.

The search for emissions measurement procedures identified two other voluntary consensus standards. EPA determined that these two standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the two methods are discussed below.

The voluntary consensus standard EN 13211:2001, ''Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury,'' is not acceptable as an alternative to the mercury portion of EPA Method 29 primarily because it is not validated for use with impingers, as in EPA method, although the standard describes procedures for the use of impingers. This European standard is validated for the use of fritted bubblers only and requires the use of a side (split) stream arrangement for isokinetic sampling because of the low sampling rate of the bubblers (up to 3 liters per minute, maximum). Also, only two bubblers (or impingers) are required by EN 13211, whereas EPA method requires the use of six impingers. In addition, EN 13211 does not include many of the quality control procedures of EPA methods, especially for the use and calibration of temperature sensors and controllers, sampling train assembly and disassembly, and filter weighing.

The voluntary consensus standard CAN/CSA Z223.26–M1987, ''Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method,'' is not acceptable as an alternative to EPA Method 29 (for mercury). This standard is not acceptable because of the lack of detail in quality control. Specifically, CAN/CSA Z223.26 does not include specifications for the number of calibration samples to be analyzed, procedures to prevent carryover from one sample to the next, and procedures for subtraction of the instrument response to calibration blank as in EPA method. Also, CAN/CSA Z223.26 does not require that the calibration curve be forced through or close to zero (or a point no further than ±2 percent of the recorder full scale) as in EPA method. Also, CAN/CSA Z223.26 does not include a procedure to assure that two consecutive peak heights agree within 3 percent of their average value and that the peak maximum is greater than 10 percent of the recorder full scale, as in EPA methods. CAN/CSA Z223.26 does not include instructions for a blank and a standard to be run at least every five samples, and specifications for the peak height of the blank and the standard as in EPA method.

Section 63.1349 to subpart LLL of this rule lists the testing methods included in the regulation. Under § 63.7(f) and § 63.8(f) of Subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 20, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: December 8, 2006.

Stephen L. Johnson,

Administrator.

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

PART 63—[Amended]

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

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

Subpart LLL—[Amended]

■ 2. § 63.1342 is revised to read as follows:

§ 63.1342 Standards: General.

Table 1 to this subpart provides cross references to the 40 CFR part 63, subpart A, general provisions, indicating the applicability of the general provisions requirements to subpart LLL.

■ 3. Section 63.1343 is revised to read as follows:

§ 63.1343 Standards for kilns and in-line kiln/raw mills.

(a) *General.* The provisions in this section apply to each kiln, each in-line kiln/raw mill, and any alkali bypass associated with that kiln or in-line kiln/raw mill. All gaseous, mercury and D/F emission limits are on a dry basis, corrected to 7 percent oxygen. All total hydrocarbon (THC) emission limits are measured as propane. The block averaging periods to demonstrate compliance are hourly for 20 ppmv total hydrocarbon (THC) limits and monthly for the 50 ppmv THC limit.

(b) *Existing kilns located at major sources.* No owner or operator of an existing kiln or an existing kiln/raw mill

located at a facility that is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources, any gases which:

(1) Contain particulate matter (PM) in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln. When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the combined particulate matter emissions from the kiln or in-line kiln/raw mill and the alkali bypass are subject to this emission limit.

(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ); or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(c) *Reconstructed or new kilns located at major sources.* No owner or operator of a reconstructed or new kiln or reconstructed or new inline kiln/raw mill located at a facility which is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain particulate matter in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln. When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the combined particulate matter emissions from the kiln or in-line kiln/raw mill and the bypass stack are subject to this emission limit.

(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ); or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(4) Contain total hydrocarbons (THC), from the main exhaust of the kiln, or main exhaust of the in-line kiln/raw mill, in excess of 20 ppmv if the source is a new or reconstructed source that commenced construction after December 2, 2005. As an alternative to meeting the 20 ppmv standard you may demonstrate a 98 percent reduction of THC emissions from the exit of the kiln to discharge to the atmosphere. If the source is a greenfield kiln that commenced construction on or prior to December 2, 2005, then the THC limit is 50 ppmv.

(5) Contain mercury from the main exhaust of the kiln, or main exhaust of the in-line kiln/raw mill, or the alkali bypass in excess of 41µg/dscm if the source is a new or reconstructed source that commenced construction after December 2, 2005. As an alternative to meeting the 41 µg/dscm standard you may route the emissions through a packed bed or spray tower wet scrubber with a liquid-to-gas (l/g) ratio of 30 gallons per 1000 actual cubic feet per minute (acfm) or more and meet a site-specific emissions limit based on the measured performance of the wet scrubber.

(d) *Existing kilns located at area sources.* No owner or operator of an existing kiln or an existing in-line kiln/raw mill located at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain D/F in excess of 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ); or

(2) Contain D/F in excess of 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(e) *New or reconstructed kilns located at area sources.* No owner or operator of a new or reconstructed kiln or new or reconstructed in-line kiln/raw mill located at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ; or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(2) Contain total hydrocarbons (THC), from the main exhaust of the kiln, or main exhaust of the in-line kiln/raw mill, in excess of 20 ppmv if the source is a new or reconstructed source that commenced construction after December 2, 2005. As an alternative to meeting the 20 ppmv standard you may demonstrate a 98 percent reduction of THC emissions from the exit of the kiln to discharge to the atmosphere. If the source is a greenfield kiln that commenced construction on or prior to December 2, 2005, then the THC limit is 50 ppmv.

(3) Contain mercury from the main exhaust of the kiln, or main exhaust of the in-line kiln/raw mill, or the alkali bypass in excess of 41 µg/dscm if the source is a new or reconstructed source that commenced construction after December 2, 2005. As an alternative to meeting the 41 µg/dscm standard you may route the emissions through a packed bed or spray tower wet scrubber with a liquid-to-gas (l/g) ratio of 30 gallons per 1000 actual cubic feet per minute (acfm) or more and meet a site-specific emissions limit based on the measured performance of the wet scrubber.

■ 4. Section 63.1344 is amended as follows:

■ a. Revising paragraphs (c) through (e);

■ b. Adding paragraphs (f) through (i).

§ 63.1344 Operating limits for kilns and in-line kiln/raw mills.

* * * * *

(c) The owner or operator of an affected source subject to a mercury, THC or D/F emission limitation under § 63.1343 that employs carbon injection as an emission control technique must operate the carbon injection system in accordance with paragraphs (c)(1) and (c)(2) of this section.

(1) The three-hour rolling average activated carbon injection rate shall be equal to or greater than the activated carbon injection rate determined in accordance with § 63.1349(b)(3)(vi).

(2) The owner or operator shall either:

(i) Maintain the minimum activated carbon injection carrier gas flow rate, as a three-hour rolling average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c), or

(ii) Maintain the minimum activated carbon injection carrier gas pressure drop, as a three-hour rolling average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c).

(d) Except as provided in paragraph (e) of this section, the owner or operator of an affected source subject to a mercury, THC or D/F emission limitation under § 63.1343 that employs carbon injection as an emission control technique must specify and use the brand and type of activated carbon used during the performance test until a subsequent performance test is conducted, unless the site-specific performance test plan contains documentation of key parameters that affect adsorption and the owner or operator establishes limits based on those parameters, and the limits on these parameters are maintained.

(e) The owner or operator of an affected source subject to a D/F, THC, or mercury emission limitation under

§ 63.1343 that employs carbon injection as an emission control technique may substitute, at any time, a different brand or type of activated carbon provided that the replacement has equivalent or improved properties compared to the activated carbon specified in the site-specific performance test plan and used in the performance test. The owner or operator must maintain documentation that the substitute activated carbon will provide the same or better level of control as the original activated carbon.

(f) Existing kilns and in-line kilns/raw mills must implement good combustion practices (GCP) designed to minimize THC from fuel combustion. GCP include training all operators and supervisors to operate and maintain the kiln and calciner, and the pollution control systems in accordance with good engineering practices. The training shall include methods for minimizing excess emissions.

(g) No kiln and in-line kiln/raw mill may use as a raw material or fuel any fly ash where the mercury content of the fly ash has been increased through the use of activated carbon, or any other sorbent unless the facility can demonstrate that the use of that fly ash will not result in an increase in mercury emissions over baseline emissions (i.e. emissions not using the fly ash). The facility has the burden of proving there has been no emissions increase over baseline.

(h) All kilns and in-line kilns/raw mills must remove (i.e. not recycle to the kiln) from the kiln system sufficient cement kiln dust to maintain the desired product quality.

(i) New and reconstructed kilns and in-line kilns/raw mills must not exceed the average hourly CKD recycle rate measured during mercury performance testing. Any exceedance of this average hourly rate is considered a violation of the standard.

■ 5. Section 63.1346 is revised to read as follows:

§ 63.1346 Standards for new or reconstructed raw material dryers.

(a) New or reconstructed raw material dryers located at facilities that are major sources can not discharge to the atmosphere any gases which:

(1) Exhibit opacity greater than ten percent, or

(2) Contain THC in excess of 20 ppmv, on a dry basis as propane corrected to 7 percent oxygen if the source commenced construction after December 2, 2005. As an alternative to the 20 ppmv standard, you may demonstrate a 98 percent reduction in THC emissions from the exit of the raw materials dryer to discharge to the atmosphere. If the source is a greenfield dryer constructed on or prior to December 2, 2005, then the THC limit is 50 ppmv, on a dry basis corrected to 7 percent oxygen.

(b) New or reconstructed raw materials dryers located at a facility that is an area source cannot discharge to the atmosphere any gases which contain THC in excess of 20 ppmv, on a dry basis as propane corrected to 7 percent oxygen if the source commenced construction after December 2, 2005. As an alternative to the 20 ppmv standard, you may demonstrate a 98 percent reduction in THC emissions from the exit of the raw materials dryer to discharge to the atmosphere. If the source is a greenfield dryer constructed on or prior to December 2, 2005, then the THC limit is 50 ppmv, on a dry basis corrected to 7 percent oxygen.

■ 6. Section 63.1349 is amended as follows:

■ a. By revising paragraph (b)(4);

■ b. By adding paragraph (b)(5);

■ c. By removing paragraph (f).

§ 63.1349 Performance Testing Requirements.

* * * * *

(b) * * *

(4)(i) The owner or operator of an affected source subject to limitations on emissions of THC shall demonstrate initial compliance with the THC limit by operating a continuous emission monitor in accordance with Performance Specification 8A of appendix B to part 60 of this chapter. The duration of the performance test shall be three hours, and the average THC concentration (as calculated from the one-minute averages) during the three-hour performance test shall be calculated. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating.

(ii) The owner or operator of an affected source subject to limitations on emissions of THC who elects to demonstrate compliance with the alternative THC emission limit of 98 percent weight reduction must demonstrate compliance by also operating a continuous emission monitor in accordance with Performance Specification 8A of appendix B to part 60 at the inlet to the THC control device of the kiln, inline kiln raw mill, or raw materials dryer in the same manner as prescribed in paragraph (i) above. Alternately, you may elect to demonstrate a 98 weight percent reduction in THC across the control device using the performance test requirements in 40 CFR part 63, subpart SS.

(5) The owner or operator of a kiln or in-line kiln/raw mill subject to the 41 μg/dscm mercury standard shall demonstrate compliance using EPA Method 29 of 40 CFR part 60. ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), is an acceptable alternative to EPA Method 29 (portion for mercury only). If the kiln has an in-line raw mill, you must demonstrate compliance with both raw mill off and raw mill on. You must record the hourly recycle rate of CKD during both test conditions and calculate an average hourly rate for the three test runs for each test condition.

* * * * *

■ 7. Section 63.1350 is amended as follows:

■ a. Revising paragraphs (g), (h) and (n); and

■ b. Adding paragraphs (o) and (p).

§ 63.1350 Monitoring requirements.

* * * * *

(g) The owner or operator of an affected source subject to an emissions limitation on D/F, THC or mercury emissions that employs carbon injection as an emission control technique shall comply with the monitoring requirements of paragraphs (f)(1) through (f)(6) and (g)(1) through (g)(6) of this section to demonstrate continuous compliance with the D/F, THC or mercury emissions standard.

(1) Install, operate, calibrate and maintain a continuous monitor to record the rate of activated carbon injection. The accuracy of the rate measurement device must be ±1 percent of the rate being measured.

(2) Verify the calibration of the device at least once every three months.

(3) The three-hour rolling average activated carbon injection rate shall be calculated as the average of 180 successive one-minute average activated carbon injection rates.

(4) Periods of time when one-minute averages are not available shall be ignored when calculating three-hour rolling averages. When one-minute averages become available, the first one-minute average is added to the previous 179 values to calculate the three-hour rolling average.

(5) When the operating status of the raw mill of the in-line kiln/raw mill is changed from off to on, or from on to off, the calculation of the three-hour

rolling average activated carbon injection rate must begin anew, without considering previous recordings.

(6) The owner or operator must install, operate, calibrate and maintain a continuous monitor to record the activated carbon injection system carrier gas parameter (either the carrier gas flow rate or the carrier gas pressure drop) established during the mercury, THC or D/F performance test in accordance with paragraphs (g)(6)(i) through (g)(6)(iii) of this section.

(i) The owner or operator shall install, calibrate, operate and maintain a device to continuously monitor and record the parameter value.

(ii) The owner or operator must calculate and record three-hour rolling averages of the parameter value.

(iii) Periods of time when one-minute averages are not available shall be ignored when calculating three-hour rolling averages. When one-minute averages become available, the first one-minute average shall be added to the previous 179 values to calculate the three-hour rolling average.

(h) The owner or operator of an affected source subject to a limitation on THC emissions under this subpart shall comply with the monitoring requirements of paragraphs (h)(1) through (h)(3) of this section to demonstrate continuous compliance with the THC emission standard:

(1) The owner or operator shall install, operate and maintain a THC continuous emission monitoring system in accordance with Performance Specification 8A, of appendix B to part 60 of this chapter and comply with all of the requirements for continuous monitoring systems found in the general provisions, subpart A of this part.

(2) The owner or operator is not required to calculate hourly rolling averages in accordance with section 4.9 of Performance Specification 8A if they are only complying with the 50 ppmv THC emissions limit.

(3) For facilities complying with the 50 ppmv THC emissions limit, any thirty-day block average THC concentration in any gas discharged from a greenfield raw material dryer, the main exhaust of a greenfield kiln, or the main exhaust of a greenfield in-line kiln/raw mill, exceeding 50 ppmvd, reported as propane, corrected to seven percent oxygen, is a violation of the standard.

(4) For new facilities complying with the 20 ppmv THC emissions limit, any hourly average THC concentration in any gas discharged from a raw material dryer, the main exhaust of a greenfield kiln, or the main exhaust of a kiln or in-line kiln/raw mill, exceeding 20 ppmvd, reported as propane, corrected to seven percent oxygen, is a violation of the standard.

* * * * *

(n) Any kiln or kiln/in-line raw mill using a control device (other then ACI) to comply with a mercury emissions limit or equipment standard will monitor the control device parameters as specified in 40 CFR part 63 subpart SS.

(o) For kilns and in-line kilns/raw mills complying with the requirements in Section 63.1344(g), each owner or operator must obtain a certification from the supplier for each shipment of fly ash received to demonstrate that the fly ash was not derived from a source in which the use of activated carbon, or any other sorbent, is used as a method of mercury emissions control. The certification shall include the name of the supplier and a signed statement from the supplier confirming that the fly ash was not derived from a source in which the use of activated carbon, or any other sorbent, is used as a method of emission control.

(p) If the facility opts to use a fly ash derived from a source in which the use of activated carbon, or any other sorbent, is used as a method of mercury emissions control and demonstrate that the use of this fly ash does not increase mercury emissions, they must obtain daily fly ash samples, composites monthly, and analyze the samples for mercury.

■ 8. Section 63.1351 is revised to read as follows:

§ 63.1351 Compliance dates.

(a) Except as noted in paragraph (c) below, the compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is June 14, 2002.

(b) Except as noted in paragraph (d) below, the compliance date for an owner or operator of an affected source subject to the provisions of this subpart that commences new construction or reconstruction after March 24, 1998, is June 14, 1999, or upon startup of operations, whichever is later.

(c) The compliance date for an existing source to meet the requirements of GCP for THC is December 20, 2007.

(d) The compliance date for a new source which commenced construction after December 2, 2005, and before December 20, 2006 to meet the THC emission limit of 20 ppmv/98 percent reduction or the mercury standard of 41 μg/dscm or a site-specific standard based on application of a wet scrubber will be December 21, 2009.

■ 9. Section 63.1355 is amended by adding paragraphs (d), (e) and (f) to read as follows:

§ 63.1355 Recordkeeping requirements.

* * * * *

(d) You must keep annual records of the amount of CKD which is removed from the kiln system and either disposed of as solid waste or otherwise recycled for a beneficial use outside of the kiln system.

(e) You must keep records of the amount of CKD recycled on an hourly basis.

(f) You must keep records of all fly ash supplier certifications as required by § 63.1350(o).

■ 10. Section 63.1356 is amended by revising paragraph (a) to read as follows:

§ 63.1356 Exemption from new source performance standards.

(a) Except as provided in paragraphs (a)(1) and (2) of this section, any affected source subject to the provisions of this subpart is exempt from any otherwise applicable new source performance standard contained in subpart F or subpart OOO of part 60 of this chapter.

(1) Kilns and in-line kiln/raw mills, as applicable, under 40 CFR 60.60(b), located at area sources are subject to PM and opacity limits and associated reporting and recordkeeping, under 40 CFR part 60, subpart F.

(2) Greenfield raw material dryers, as applicable under 40 CFR 60.60(b), located at area sources, are subject to opacity limits and associated reporting and recordkeeping under 40 CFR part 60, subpart F.

* * * * *

[FR Doc. E6–21405 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0051; FRL–8256–3]

RIN 2060–AJ78

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry: Notice of Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration.

SUMMARY: EPA is announcing that it is reconsidering the new source standards for mercury and for total hydrocarbons (THC) which are part of the National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry, published on December 20, 2006.

DATES: Comments are due no later than February 20, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0051. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Research Triangle Park, NC 27711; telephone number (919) 541–5605; facsimile number (919) 541–3207; e-mail address *barnett.keith@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. *Does this action apply to me?* Entities potentially affected by this action are those that manufacture portland cement. Regulated categories and entities include:

TABLE 1.—REGULATED ENTITIES TABLE

Category	NAICS [1]	Examples of regulated entities
Industry	32731	Owners or operators of portland cement manufacturing plants.
State		None.
Tribal associations		None.
Federal agencies	None	None.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that may potentially be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

Reconsideration of the New Source Mercury Standard

On December 2, 2005, EPA proposed amendments to the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (70 FR 72330). Among other things, we proposed to amend the emission standards for mercury, hydrogen chloride, and total hydrocarbons. We are publishing the final amendments in another part of today's **Federal Register**. The final amendments contain a mercury new source standard of 41 μg/dscm for cement kilns and kilns/in-line raw mills, or an alternative standard requiring application of a limestone wet scrubber with a liquid-to-gas ratio of 30 gallons per thousand actual cubic feet per minute of exhaust gas with a site-specific numeric limit to be established based on that scrubber's performance.

In this notice, we are ourselves granting reconsideration of this new source standard for mercury. We are doing so because we believe that reconsideration is compelled by section 307(d)(7)(B) of the Act, since the information on which the standard is based arose after the period for public comment and (obviously) is of central relevance to the rulemaking. In addition, as explained in the following paragraphs, we believe that there remain important technical issues which we hope to better resolve during the reconsideration process.

In developing the final amendments, we noted that there are at least five cement kilns that have limestone (wet) scrubbers for control of SO_2. As explained more fully in the preamble to the final amendments, based on our experience with utility boilers, as well as on general engineering principles, we expect that the scrubbers on cement kilns remove mercury, although the amount of removal is uncertain. Thus, assuming reductions occur, which we believe to be the case based on the limited information in the record, a portland cement kiln equipped with a scrubber would have the best performance for mercury over time, since variability in mercury emissions attributable to raw material and fuel inputs would be controlled in part.

We have mercury test data from two portland cement kilns equipped with wet scrubbers, measured exclusively at the scrubber outlet. These data range from 0.42 to 30 μg/dscm, which fall within the range of test data from all

portland cement kilns (those with wet scrubbers and those without wet scrubbers). They are among the lowest end-of-stack mercury data in our data base (although not the lowest). This could indicate that some removal mechanism is involved. Variability of mercury emissions at the scrubber-equipped kilns for which we have multiple test data differs by orders of magnitude. See Summary of Mercury Test data in Docket EPA–HQ–OAR–2002–0051.

As noted above, we have no test data for mercury measured at the scrubber inlet. As a result, we cannot, on the basis of the current data, determine with absolute certainty if the outlet mercury emissions from the wet scrubber-equipped kilns are a result of mercury removal by the scrubber, or simply reflect the amounts of mercury in the raw materials. Nonetheless, for the reasons described in the preamble to the final amendments, we believe, based on the limited information in the record, that it is reasonable to find that wet scrubbers remove some mercury from cement kiln emissions.

In the final amendments being published concurrently with this notice, we developed an emissions limit of 41 µg/dscm (corrected to 7 percent oxygen) using the following rationale. First, we limited the analysis to data from wet scrubber-equipped kilns regardless of their actual outlet emissions levels. Second, we ranked all the wet scrubber mercury emissions with the raw mill off—a recurring mode of operation for cement kilns reflecting the maximum variability a properly designed and operated scrubber-equipped kiln would experience. We then took the mean raw mill off value for mercury emissions from the best performing wet scrubber-equipped cement kiln in our (limited) data base, and multiplied it by a variability factor which accounts for normal, unavoidable variation in mercury emissions. This variability factor is the standard deviation of the data multiplied by 2.326 to produce the 99th confidence interval. We looked to all of the data we have from cement kilns equipped with wet scrubbers, rather than just to data from the single lowest-emitting kiln, because there are too few data points from the lowest emitting kiln to properly estimate its variability. The result of this analysis is a new source floor of 41 µg/dscm, which we then adopted as the new source standard. This standard must be met continuously (raw mill on and raw mill off).

Because of the limited performance data characterizing performance of the lowest-emitting scrubber-equipped kiln, we also developed an alternative new source mercury floor. The best performing kiln is equipped with a wet scrubber. Therefore, if a new source installs a properly designed and operated wet scrubber, and is unable to achieve the 41 µg/dscm standard, then whatever emission level the source achieves (over time, considering all normal sources of variability) would become the floor for that source. Based on the design of the wet scrubbers that were the basis of the new source floor, this would be a packed bed or spray tower wet scrubber with a minimum liquid-to-gas ratio of 30 gallons per thousand actual cubic feet of exhaust gas. We also adopted this alternative floor as an alternative new source emission standard for mercury.

As noted above, we are ourselves granting reconsideration of the new source mercury standard adopted in the final amendments, both due to substantive issues relating to performance of wet scrubbers and because information about their performance in this industry has not been available for public comment. As part of the reconsideration process, we are initiating a test program to simultaneously measure mercury emissions at the inlet and the outlet of wet scrubbers currently installed on cement kilns. By doing so, we expect to be able to better resolve the ultimate issues we are reconsidering: the appropriateness of the new source standard (and floor), and whether wet scrubbers remove mercury from portland cement kiln emissions, and if so, to what extent.

We intend to complete the reconsideration process by December 20, 2007. When data from the testing process are in hand, we will issue another **Federal Register** notice describing the data and the testing process by which the data were obtained, and seek public comment on those data and on the testing process. As part of that notice, we may also propose to amend the new source standard.

At the present time, we are also soliciting any data that could potentially be relevant in this reconsideration process. Given the expedited schedule for reconsideration of the new source mercury standard, we are asking that the data be submitted to EPA as soon as possible, and no later than February 20, 2007, so that we can properly consider it prior to publishing another notice in the **Federal Register**. The data should be submitted to the person and address in the **FOR FURTHER INFORMATION CONTACT** section.

Reconsideration of Existing and New Source Standard Banning Cement Kiln Use of Certain Mercury-Containing Fly Ash

As part of the final rule, EPA adopted a standard for both new and existing sources banning the use of utility boiler fly ash in cement kilns where the fly ash mercury content has been increased through the use of activated carbon or any other sorbent unless the facility can demonstrate that the use of that fly ash will not result in an increase in mercury emissions over baseline emissions (i.e. emissions not using the mercury increased fly ash). See section IV.A.2 to the preamble to the final rule. EPA took this action because of the potential for significant increases in mercury emissions from cement kilns, and because the positive energy and non-air health and environmental impacts from current recycling of utility fly ash as feed material in cement kilns would not be significantly impeded. Although EPA alluded to the possibility of this type of standard at proposal (70 FR 72334), we nonetheless believe it appropriate to reconsider the issue to provide further opportunity for comment on both the standard and the underlying rationale, because we do not feel we have the level of analysis we would like to support a beyond-the-floor determination. We request that all comments be submitted to EPA no later than February 20, 2007.

Reconsideration of New Source Standard for THC

As part of the final amendments, EPA also issued a standard for new cement kilns of 20 ppmv (corrected to 7 percent oxygen) or 98 percent reduction in THC emissions from uncontrolled levels. This standard is based upon the performance of a single cement kiln which has installed a regenerative thermal oxidizer (RTO) in series with a wet scrubber (which precedes the RTO and enables its performance by preventing plugging, fouling, and corrosion of the device). We are ourselves granting reconsideration of this standard in this notice. We are doing so because we believe that reconsideration is compelled by section 307(d)(7)(B) of the Act, since the information on which the standard is based arose after the period for public comment and is of central relevance to the rulemaking.

We are specifically requesting comment on the new source standard itself, as well as on the information upon which the standard is based. We also are soliciting data on THC emission levels from preheater/precalciner cement kilns. We further solicit

comment as to whether the promulgated standard is appropriate for reconstructed new sources, should any be contemplated (it is our understanding that all new source cement kilns will be newly constructed). We request that all comment be submitted within February 20, 2007. EPA will evaluate all data and comments received, and determine whether in light of those data and comment it is appropriate to propose to amend the promulgated standard. If EPA does propose to amend the standard, EPA would take final action on the proposal within the same one year period that we are allotting for completion of the reconsideration process for the new source mercury standard.

How can I get copies of the final amendments and other related information?

EPA has established the official public docket for this rulemaking under docket ID No. EPA–HQ–OAR–2002–0051. Information on how to access the docket is presented above in the **ADDRESSES** section. In addition, information may be obtained from the Web page for the rulemaking at: *http://www.epa.gov/ttn/atw/pcem/pcempg.html.*

Dated: December 8, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–21404 Filed 12–19–06; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
December 20, 2006

Part V

Department of Labor

Employment and Training Administration

20 CFR Parts 652, 661, et al.
Workforce Investment Act Amendments; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 652, 661, 662, 663, 664 and 667

RIN 1205–AB46

Workforce Investment Act Amendments

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (DOL) is issuing a Notice of Proposed Rulemaking to implement several important policy changes to the Workforce Investment Act and Wagner-Peyser Act Regulations in volume 20 of the Code of Federal Regulations (CFR). Through these regulations, the Department implements these two laws and provides guidance for statewide and local workforce investment systems that have as their goals increasing the employment, retention and earnings of participants. By achieving these goals, the systems strive to improve the quality of the workforce, meet business needs for a skilled workforce, help participants achieve their career aspirations, reduce welfare dependency, and enhance the productivity and competitiveness of the nation. The changes set forth in this proposed rulemaking address some long-standing issues that have arisen under the current WIA regulations, such as problems associated with the large size of State and Local Workforce Investment Boards; the sequence of core, intensive and training services; the governor's authority over eligible training providers, and the availability of Individual Training Accounts to youth. In addition, the changes set forth in this proposed rulemaking address the method of delivery of Wagner-Peyser Act-funded services.

DATES: To be assured of consideration, comments must be in writing and must be received on or before February 20, 2007.

ADDRESSES: Electronic mail is the preferred method for submittal of comments. Comments by electronic mail must be clearly identified as pertaining to this proposed rulemaking and sent to *nprm.comments@dol.gov.* Electronic comments may also be submitted through the Federal eRulemaking portal at *http://www.regulations.gov* by following the directions at that site. Brief comments (maximum of five pages) clearly identified as pertaining to this proposed rulemaking may be submitted by facsimile machine (FAX) to (202) 693–2766. Please note that this is not a toll-free number.

Written comments should be sent to Ms. Maria Flynn, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N5641, Washington, DC 20210. Please be advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to security concerns. Commenters should consider the possibility of delay when deciding to submit comments by mail. If you would like to receive notification that we have received your comments, you should include a self-addressed stamped postcard.

Comments received will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this rule will be made available, upon request, in large print and electronic file on computer disk. Provision of the rule in other formats will be considered upon request. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternate format, contact Maria Flynn's office at (202) 693–3700 (VOICE) or 887–889–5627 (TTY/TDD). Please note that these are not toll-free numbers. You may also contact Ms. Flynn's office at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Flynn, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210, Telephone: (202) 693–3700 (VOICE) or 887–889–5627 (TTY/TDD) Please note that these are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The preamble to this proposed rule is organized as follows:

I. Background—provides a brief description of the statutory and regulatory background of this proposed rule.

II. Overview of the Proposed Amendments—describes the amendments that would be accomplished by this proposed rule and explains the reasons for the amendments.

III. Regulatory Procedure—sets forth the applicable regulatory requirements.

I. Background

The Workforce Investment Act (WIA), enacted in August 1998, reformed Federal job training programs and created a new, comprehensive workforce investment system. WIA was a groundbreaking piece of legislation that replaced the Job Training Partnership Act and amended the Wagner-Peyser Act. WIA sparked improvements in the delivery of employment and training services nationwide, but after a number of years of operation it has become clear that changes to regulations and legislation are needed The authorization of appropriations for WIA expired on September 30, 2003. As discussed below, during the 108th Congress legislation to reauthorize and reform WIA was considered but not enacted, and again in the 109th Congress, legislation was considered and is still pending. Because Congressional action on reauthorization reforms has been delayed, the Department of Labor decided to move forward with limited reforms that could be undertaken without changes in the statute. More significant reforms will require Congressional action.

For three years, the Bush Administration has been working with Congress to reform the workforce investment system by advancing changes that would: (1) Streamline services in order to promote more effective programs; (2) reduce bureaucracy and duplicative infrastructure in order to achieve cost savings; and (3) dedicate more funds directly to worker training. While these critical reforms have not been enacted, the realization of all three goals is vital to assuring that the workforce investment system is an asset in assisting workers and fostering U.S. economic competitiveness in a global environment.

Anticipating reauthorization, in 2002 and early 2003, the Department of Labor undertook extensive consultations with stakeholders and the public on how the workforce investment system could be strengthened to address the challenges of globalization, technological advances, and the demographic changes of the American workforce. Based on this and other input, the Department developed the Administration's WIA reauthorization proposal to build on the reforms that were contained in the Act in order to make WIA even more effective and responsive to the needs of local labor markets, to strengthen the One-Stop Career Center system to better serve businesses and individuals with workforce needs, and to promote further innovation. The Administration's reauthorization proposal addressed six key areas:

- Creating a more effective governance structure;
- Strengthening the One-Stop Career Center system;
- Improving comprehensive services for adults;
- Creating a targeted approach to serving youth;
- Improving performance accountability; and
- Promoting State flexibility.

Following hearings and Committee action, both the House of Representatives and the Senate passed versions of WIA reauthorization legislation, incorporating many features of the Administration's proposal. A House-Senate conference to resolve differences between the two bills was not convened during the 108th Congress. In the 109th Congress, WIA reauthorization legislation passed the House in 2005 and the Senate in 2006, but there has been no further action. Congress appropriated funds for WIA activities in the FY 2004, FY 2005 and FY 2006 Department of Labor Appropriations Acts, but substantive reforms have not been made. In addition, language in the appropriations act has proscribed the Department from amending through regulation (until WIA reauthorization legislation is enacted): (1) The definition and functions that constitute administrative costs under WIA, and (2) the procedure for re-designation of local areas.

This proposed rulemaking addresses changes that can be made under current law. Further reforms that require statutory changes are still needed, and the Administration is committed to working with Congress to achieve further reforms. In his FY 2007 Budget Request, the President has proposed to establish Career Advancement Accounts and make other reforms to WIA. Career Advancement Accounts are self-managed accounts of up to $3,000 (renewable for a second year) that individuals may use to pay for expenses directly related to education and training that are necessary to obtain or retain employment or advance in their careers. Career Advancement Accounts are expected to triple the number of workers trained under WIA.

This rulemaking does not implement changes to WIA made by the Trade Adjustment Assistance Reform Act of 2002. These changes, which pertain to Rapid Response and National Emergency Grants (particularly for Health Coverage Tax Credit grants) will be addressed in a separate rulemaking. Other technical changes will be made as part of a consolidated effort to update all Department of Labor regulations.

The changes set forth in this proposed rulemaking address some long-standing issues under the current WIA regulations, such as problems associated with the large size of State and Local Workforce Investment Boards; the sequence of core, intensive and training services; the governor's authority over eligible training providers, and the availability of Individual Training Accounts to youth. In addition, the changes in this proposed rulemaking address the method of delivery of Wagner-Peyser Act-funded services.

A. Delivery of Wager-Peyser Act-Funded Services

1. Integration of Wagner-Peyser Act Funded Services at One-Stop Career Centers

The Secretary is charged with assisting in the coordination and development of the public labor exchange which is required by sec. 7(e) of the Wagner-Peyser Act (as amended by WIA sec. 305) to be carried out as part of the One-Stop service delivery system. To this end, current Wagner-Peyser Act regulations, at 20 CFR 652.202, state that local Employment Service offices may not exist outside the One-Stop service delivery system, but provide States with flexibility to permit Employment Service offices to operate as affiliated sites provided that certain conditions are met. The intent of the law and regulations is to closely tie Employment Service offices and services to One-Stop Career Centers. However, in some states the two offices continue to exist side-by-side; sometimes with very little coordination. Through informal surveys conducted of ETA staff, we found that 19 States still operate stand-alone Employment Services offices and 13 States operate parallel systems to a substantial degree. Such disconnects at the local level result in confusion for individuals and employers and promote duplication of effort and an inefficient use of resources.

These problems demonstrate that our original interpretation of sec. 7(e) of the Wagner-Peyser Act did not effectively integrate Wagner-Peyser Act-funded labor exchange and reemployment services with WIA-funded One-Stop Career Center services. To address this, we propose to more definitively mandate that Employment Service offices be fully integrated into comprehensive One-Stop Career Centers. Therefore, this NPRM modifies § 652.202 to make clear that local Employment Service offices must be located in comprehensive One-Stop Career Centers, and that the customer employment services under the Wagner-Peyser Act must be fully integrated with services in comprehensive One-Stop Career Centers. In addition, we propose to amend § 662.100 to provide that stand-alone Employment Service offices will no longer qualify as affiliated One-Stop Career Centers.

Employment Service offices which are operating apart from comprehensive One-Stop Career Centers will no longer be allowed. States and Local areas will need to look at the distribution of services in their area and consider options such as moving those offices into comprehensive One-Stop Career Centers or expanding the services of Employment Service offices into comprehensive One-Stop Career Centers. Real property requirements may be an issue in some areas.

Given that many Wagner-Peyser Act-funded reemployment services are also authorized as core services under WIA, better integrating Employment Service services into the One-Stop Career Centers under these regulations will provide States and local areas with the opportunity to more efficiently manage the costs of such services and eliminate duplication in order to free up other funds for intensive and training services.

2. Use of Section 7(c) Funds

This NPRM makes a technical change to § 652.205(b)(1) by adding the word ''otherwise'' to more closely track the statutory language in sec. 7(c) of the Wagner-Peyser Act. The statute provides that sec. 7(c) funds may be used to provide additional funds to activities carried out under WIA if certain conditions are met; one of which is that the program ''otherwise'' meet the requirements of Wagner-Peyser and WIA. This NPRM adds the term ''otherwise'' to the regulation to avoid a mistaken conclusion that the regulation is intended to differ from the statutory standard.

3. Merit Staffing

In the interest of providing maximum flexibility to all States, and to encourage innovative and creative approaches to delivering employment services with limited resources, we are changing our interpretation of the Wagner-Peyser Act to extend the option of using non-merit-staffed employees to all States. Current Wagner-Peyser Act regulations, at § 652.215, require that job finding, placement, and reemployment services funded under the Wagner-Peyser Act be delivered by State merit-staffed employees. The Wagner-Peyser Act does not explicitly impose this requirement, but rather the Secretary of Labor

previously issued the requirement through the exercise of the Secretary's authority under sections 3(a) and 5(b)(1) of the Act to develop and prescribe minimum standards of efficiency for State public Employment Services and promote uniformity in their administrative procedure. We have reconsidered the necessity of this requirement. States operating demonstration projects using non-merit-based staff systems have shown positive performance outcomes and have provided similar quality services under WIA using non-merit-staffed employees. While we continue to promote uniformity in administrative procedure, we find that variation from delivery by State merit-staffed does not negatively affect the effectiveness and efficiency of the Wagner-Peyser Act-funded Employment Service program.

Under our authority to develop and prescribe minimum standards of efficiency for the provision of State public Employment Services, we will no longer require that these services only be delivered by State merit-staffed employees. Accordingly, we propose to remove 20 CFR 652.215 and 652.216 and replace them with a new § 652.215 that specifically authorizes States to deliver Wagner-Peyser Act-funded Employment Services through methods in addition to State merit-staffed delivery systems.

The requirement under the current regulation is reflected in Office of Personnel Management (OPM) regulations under the Intergovernmental Personnel Act, which identifies the Wagner-Peyser Act as among the Federal programs containing statutory merit-staffing requirements. (5 CFR part 900, subpart F, Appendix A). Because we no longer interpret the Wagner-Peyser Act as containing a mandatory merit-staffing requirement, there are no longer any functions and duties relating to the Wagner-Peyser Act to be transferred to the Director of OPM under the sec. 208 of the Intergovernmental Personnel Act (Pub. L. 91–648). We have consulted with OPM on our determination to no longer require that Wagner-Peyser Act-funded services be delivered only by State merit-staffed employees. The Director concurs that this determination is within the scope of the Secretary's authority to administer the Wagner-Peyser Act. The OPM intends to amend Appendix A to remove the Wagner-Peyser Act from the list of programs identified as having a merit system of personnel. Guidance on services to veterans provided under 38 U.S.C. Chapter 41 will be issued separately by the Office of the Assistant Secretary for Veterans' Employment and Training Service.

The Department made this determination based on a number of factors. Eliminating merit staffing requirements provides maximum flexibility to all States, and encourages innovative and creative approaches to delivering employment services with limited resources. The policy of requiring all Wagner-Peyser services to be delivered by State merit-staffed employees is an anachronism that creates rigidity and severely limits flexibility in the delivery of services. It does not take into account the intended integration of employment services into the One-Stop delivery system, nor the wide variety of State and local arrangements for delivering these services. This change allows States to deliver services in the manner they feel is most effective and efficient. Some States have taken the initiative to achieve greater flexibility already.

Three demonstrations have showed that it is possible to deliver Wagner-Peyser services efficiently and effectively using non-State merit-staffed employees. Under section 3(a) of the Wagner-Peyser Act, beginning in the early 1990s, the Department authorized demonstrations of the effective delivery of Wagner-Peyser Act services utilizing non-State agency employees in the States of Colorado, Massachusetts, and Michigan. These three demonstrations were permitted as exceptions to the merit staffing regulations in order to assess the effectiveness of alternative delivery systems—specifically, whether using non-State agency employees was an effective and efficient way to deliver Wagner-Peyser services. While a formal evaluation of the three Wagner-Peyser demonstrations has not been completed, the Department believes the three demonstration states are performing successfully based on their performance outcomes and the absence of customer or stakeholder complaints. Performance for the three states for the Program Year ending June 30, 2005 was similar to the national average performance under Wagner-Peyser.

In addition, the Department has found that similar services are effectively delivered through systems without merit staffing requirements. States have had experience administering similar services through non-merit staff personnel dating back to 1982 under the Job Training Partnership Act and WIA. WIA formula programs provide similar services using non-merit staffed employees (WIA has no merit-staffing requirement). Examples of similar services include: job search assistance, job referral and placement assistance for job seekers, re-employment services to unemployment insurance claimants, and recruitment services to employers with job openings. WIA outcomes for the Adult and Dislocated Worker Programs for the Program Year ending June 30, 2005 were higher than those for the Wagner-Peyser program. Although WIA and Wagner-Peyser placement and retention rates might not be directly comparable given the differences in the populations served under the programs, the data do show that non-merit staff WIA employees are effectively delivering similar services.

Given the demonstrations have shown that efficient administration of the Employment Service program can be achieved through alternate service delivery systems, and that under a similar program, similar services are delivered by non-merit staff, the Department believes it should provide maximum flexibility to the States by changing our interpretation of the Wagner-Peyser Act to extend the option of using non-merit-staffed employees to all States. States could, at their discretion, continue to have merit staff employees carry out such activities.

B. Changes to WIA Regulations

Part 661—Statewide and Local Governance of the Workforce Investment System Under Title I of the Workforce Investment Act

Part 661 establishes the governance structure for the workforce investment system at the Federal, State and local levels. This NPRM proposes changes to this part to provide States and local areas with additional flexibility to design workforce investment systems that are demand-driven and are responsive to the needs of business and workers.

1. Role of the Department of Labor as the Federal Partner

Section 661.110 describes the Department of Labor's role in providing leadership and guidance to the workforce investment system. The proposed rule would revise this section to emphasize that the workforce investment system should be demand-driven, meeting the needs of businesses and workers for high-demand occupations in the 21st century, and to emphasize the linkage of resources devoted to employment, education, and economic development.

2. State and Local Workforce Investment Board Membership

We propose to amend the State Workforce Investment Board membership requirements to improve

coordination between the workforce investment system and the State Vocational Rehabilitation (VR) program. Current WIA regulations allow another State Board member to represent VR (if, for example, the VR program falls under another umbrella agency). Section 661.200(h)(3) would be amended to specify that the director of the State VR program must be a member of the State Board if that director is not on the State Board as a lead official of a One-Stop partner program. This emphasizes the importance of having the VR program represented on the State Board regardless of the organizational arrangements in a particular State. VR is a key One-Stop partner program that shares common employment-related goals as part of the nation's workforce investment system. It is critical that programs work together in a seamless, coordinated manner to maximize Federal resources to serve individuals with disabilities. This coordination would be facilitated by VR representation on the State Board. The rule would also specify that, in those States where there is more than one VR director, the director of the unit that serves the most individuals with disabilities in the State must be the representative unless the VR directors agree to permit a different VR director to be the representative. However, only one VR director can sit on the board. This change stems from growing concerns about the number of representatives on State Boards and their ability to operate effectively as described in the next paragraph. However, the appointed representative will be expected to provide input for both units.

In addition, we are seeking comments regarding the ability of State and Local Workforce Investment Boards to function efficiently and effectively under existing Board membership requirements. One of the key concerns raised by stakeholders during the implementation of WIA was the size and workability of the State and Local Workforce Investment Boards. As a result of stakeholder briefings on the legislation and the comments received during the development of the rule currently in effect, the August 2000 Final Rule's preamble indicates, ''the greatest number of comments on part 661 related to the State and Local Board membership requirements. * * * We received a large number of comments about the requirement, at 661.200(b) and 661.315(a), that at least two or more members of the State and Local Boards be selected to represent the membership categories. * * * The comments reflect a tension between the need to provide States and Local areas with the flexibility to keep these boards a manageable size with the need for specificity as to what level of participation is guaranteed to stakeholders.''

ETA has continued to hear this concern through stakeholder briefings. For example, ETA continues to hear that there are state boards that have approximately 50 members and as a result are very difficult to manage and often have little strategic value. In many instances, the impact of the membership requirements has seriously constrained the Boards' ability to perform their duties. In particular, several stakeholders have reported that the provisions in §§ 661.200(b) and 661.315(a), specifying that the State and Local Boards must contain ''two or more members'' representing certain categories results in large, unwieldy Boards, which has made planning and decision-making difficult, impeding the flexibility needed to adapt to dynamic State and local economies. We have also been informed that the size of the Boards has deterred the participation of some individuals as Board members. In particular, the reluctance of individuals from the business community to serve as Board members makes it difficult to develop the business-led Boards envisioned by Congress. We are interested in exploring how many Boards are encountering these problems. We invite comments from stakeholders regarding their experience with the existing Board membership requirements and on any possible changes to these requirements, such as our suggestion described below.

In an effort to give States and local areas the opportunity to reorganize their Boards to a more manageable and productive size, we are considering whether to reassess our determination that the law mandates that each Board contain two or more members representing the groups specified in WIA secs. 111(b)(1)(C) (iii)–(v) and 117(b)(2)(A)(ii)–(v). We are considering whether to revise the regulations to require a minimum of one member representing these groups, to provide State and Local Boards with the option to reduce their size, if necessary, to improve the effectiveness of the Board.

Current WIA regulations, at § 661.200(b), specify that the State Workforce Investment Board must contain ''two or more members'' representing the categories described in WIA sec. 111(b)(1)(C)(iii)–(v). These categories relate to: labor, youth experts, and experts in the delivery of workforce investment activities (including chief executive officers of community colleges and community-based organizations in the State). For Local Boards, the current WIA regulations, at § 661.315(a), specify the Local Workforce Investment Board must contain ''two or more members'' representing the categories described in WIA sec. 117(b)(2)(A)(ii)–(v). These categories relate to: education entities, labor, community-based organizations, and economic development agencies. These regulations implement provisions in WIA stating that the Boards must contain ''representatives'' of these organizations and groups.

We are considering a change to the regulations that would delete language requiring that ''two or more representatives'' of these membership categories serve on the Board. During the public comment period following the publication of the WIA Interim Final Rule, a commenter suggested that 1 U.S.C. 1 provides legal support for the interpretation that WIA sec. 111(b)'s and 117(b)(2)(A)'s use of the word ''representatives'' does not necessarily mean that Congress intended to use the word as a plural of each category, but rather as a collective reference. The commenter suggested that 1 U.S.C. 1 provides that in determining the meaning of an Act of Congress, ''words importing the plural include the singular.'' In the final rule, we did not adopt the commenter's suggestion. Instead, we interpreted the language as signifying only the plural in an attempt to serve the interest of broad representation, while acknowledging the potential effects on Board size. 65 FR 49294, 49300 (August 11, 2000). In light of the several Board management problems described above, we are reconsidering the commenter's suggestion.

In reassessing the meaning of the word ''representatives'' in WIA sec. 111(b) and 117(b)(2)(A), we are seeking comments on whether it is reasonable, as a matter of law and statutory construction, to conclude that Congress did not intend to require more than one representative from each enumerated category. Is there anything in the context of these provisions that indicates that the terms are meant only to import the plural, particularly when such an interpretation has resulted in Boards that are too large to effectively carry out their statutory duties? It appears that when Congress indeed intended to require multiple member representation it did so in a more clearly unambiguous manner. For example, section 111(b)(1)(B) specifically provides that the State legislature is to be represented by ''2 members of each

chamber.'' In light of this, we are considering whether to change our interpretation of WIA's Board membership requirements to conclude that they mandate a minimum of one representative of each category rather than two or more.

We invite comments on whether to change §§ 661.200(b) and 661.315(a) to require a minimum of one representative from each specified membership category to give States flexibility to reduce the size of the Boards. Under such a rule, only one member would be required to represent each of these categories on the State Board and Local Boards. However, Boards would continue to have the option of appointing more than one representative in any category.

3. State and Local Workforce Investment Board Functions

Sections 661.205 and 661.300 set forth the roles and responsibilities of State and Local Workforce Investment Boards, respectively. This NPRM proposes adjustments to these responsibilities to provide States flexibility to undertake more extensive and sophisticated policy-making activities and to provide the leadership needed to guide the workforce system in becoming more demand-driven and responsive to the needs of business. We also propose a change to emphasize Local Board functions with respect to oversight and management of Federal WIA funds.

In particular, we propose to add a new paragraph to § 661.205 to add as a State Board function, the development and review of statewide policies for the One-Stop Career Center system. We propose to add this function as part of the Board's responsibility for developing and improving a statewide system of activities carried out through the One-Stop delivery system under WIA sec. 111(d)(2). The proposed change will help focus the State Board on system-wide leadership for the One-Stop Career Center system rather than on local operations. Local Boards will continue to have operational responsibility for their One-Stop Career Centers.

These policies may include policies for the development of criteria and issuance of certifications for One-Stop Career Centers, policies relating to the appropriate roles of One-Stop operators, approaches to facilitating equitable and efficient cost allocation in One-Stop delivery systems, and strategies for effective outreach to individuals and employers who could benefit from One-Stop services and policies. Giving the State Board responsibility for developing criteria and issuing certifications of One-Stop Career Centers will ensure that all One-Stop Career Centers in the State meet minimum State criteria, which in turn will promote a higher level of uniformity and consistency of service delivery across the State. It will also provide the State with explicit authority to address deficiencies where they exist. WIA sec. 111(d)(2) provides that the State Board is responsible for developing and continuously improving a statewide system of workforce investment activities carried out by a One-Stop service delivery system. This regulation implements this provision by giving states the option to develop certification standards for One-Stop Career Centers to carry out this responsibility, which is allowable under the statute.

In general, providing an increased State role in the One-Stop system is intended to promote more consistent and better program and system performance. Through the State Board, the State administrators of One-Stop partner programs would also have greater involvement in setting policies for the One-Stop system, resulting in increased participation of the One-Stop partner programs in the system.

This NPRM also proposes to amend §§ 661.300 and 661.305 to emphasize the Local Board's role in the proper administration of funds under WIA title I. This would clarify that one of the Local Board's responsibilities is to oversee the appropriate use and management of funds. The Department believes this change will strengthen accountability at the local level and reinforce the significant role of the Local Board in overseeing the local workforce investment system. The provision is intended to fill a gap in existing regulations with regard to the responsibilities of the Local Board and chief elected official. The relationship between the Local Board and the chief elected official with regard to fiscal management is touched on in several places, but is not clearly expressed in the current regulations. Under WIA sec. 117(d)(3)(B)(i)(III) and 20 CFR 667.705, the chief elected official is the grant recipient and is liable for misuse of funds, but he or she must disburse WIA funds at the direction of the Local Board (unless the disbursement would violate the act). The proposed regulation will make clear that with the Local Board's authority to direct the expenditure of funds comes the responsibility to oversee the appropriate use and management of the funds. This strengthens accountability at the local level and reinforces the significant role of the Local Board in overseeing the local workforce system. This amendment is not intended to change the relationship between the Local Board and chief elected official or to change the local grant recipient's liability for misuse of funds.

4. State and Local Plan Submission Requirements

Sections 661.220 and 661.230 provide the requirements for submission and modification of the State Workforce Investment Plan. WIA section 112 required the submission of a single five-year plan in order to be eligible to receive funding under title I of WIA and the Wagner-Peyser Act. Several State Plans expired at the end of PY 2003 (June 30, 2004) and the remaining State Plans expired by the end of PY 2004 (June 30, 2005). Because we expect a new round of strategic planning will be necessary when WIA is reauthorized, we did not require the early implementing states with expiring plans to submit a new five-year plan, but instead we permitted them three options: to extend their current plan for one year, to modify the current plan, or to submit only the first year of a new five-year plan. Because these unusual circumstances continue, we did not require States to submit full five-year plans for PY 2005. For PY 2005, States were required to submit plans covering only the first two years of a five-year plan. (70 FR 19206 (Apr. 12, 2005)). We propose to amend § 661.220 to codify the planning options available to States to qualify for funding while WIA reauthorization is pending. As amended, this section provides that the Secretary has authority to permit States to submit plans covering a portion of a five-year planning period or to establish other plan submission options (such as extensions) in unusual circumstances. To provide Governors with authority to provide similar options for local plan submission, we have added new language to § 661.350(d) setting forth specific options for local plan submission, in place of language addressing PY 2000 transitional plans. We intend that the State and local plan submission options will be available for PY 2005 and until such time as WIA is reauthorized. If WIA is reauthorized late in a particular program year, we will reassess the options for transition planning in light of the reauthorized statute.

We also propose changing § 661.240, to permit States to revise existing unified plans by filing a new portion of the plan to replace the expiring portions covering WIA and Wagner-Peyser. Under § 661.240(b)(2)(i), the Department

issued new planning guidelines to provide instructions on submitting such plans. (70 FR 19222 (Apr. 12, 2005)).

5. Regional Planning

Section 661.290 describes the circumstances in which the State may require Local Boards to take part in regional planning activities. This provision permits States to undertake methods to improve performance across area boundaries by requiring local areas to engage in a regional planning process to share employment-related information and to coordinate the provision of local services pursuant to that regional planning. We have reassessed the requirement in paragraph (d) that regional planning may substitute for or replace local planning only when the Governor and all affected local chief elected officials agree. While this requirement was meant to ''strike a balance,'' in effect, it may have led to duplicative planning at both the local and regional level and is counter to the intent of the regional planning provisions. Since the Act clearly authorizes the State to require local areas to participate in regional planning activities, this NPRM proposes to strike section 661.290(d) to avoid the possibility of such duplication. Where the State requires local areas to participate in regional planning, those local areas are not required to undertake local planning activities.

6. Youth Councils for Alternative Entities

Under current regulations, an alternative entity is not required to have a youth council. However, it is required to perform the duties of a youth council specified in WIA sec.117(h)(4). We propose to amend § 661.335 to clarify that, while it need not have a youth council, an alternative entity must have a process for ensuring that the broader youth representation envisioned in WIA is fully afforded the opportunity to participate in carrying out the responsibilities of the youth council. An alternative entity could fulfill these responsibilities in a number of ways, such as:

—By forming a subcommittee, in the form of a youth council, assigning members of the Local Board with particular interest or expertise in youth policy, to address the specific needs of youth;

—By ''grandfathering'' in a local youth entity that is substantially similar to a youth council, to carry out youth council responsibilities; or

—By adding members who have specific youth experience (as long as it does not result in a significant change in the membership structure of the alternative entity).

7. Waivers

Section 661.410 specifies the scope of the Secretary's waiver authority under WIA sec. 189(i). Paragraph (c) provides a higher standard of review for requests to waive provisions that are essential to the key reform principles of WIA; ''extremely unusual circumstances where the provision can be demonstrated as impeding reform.'' In practice, we have found that this regulatory provision is an unnecessary burden. Most State requests relating to key principles have been for provisions not essential to the principles, or the State has met the burden for waiver approval. In order to eliminate this unnecessary burden, we propose to remove this provision. Accordingly, under the proposed regulation, waivers of provisions relating to key reform principles will be considered under the standards of section 661.420(e) in the same manner as requests to waive other provisions.

Part 662—Description of the One-Stop System Under Title I of the Workforce Investment Act

1. Provision of Core Services Under the One-Stop System

Currently, § 662.250 describes where and to what extent One-Stop partner programs must make core services available. Section 662.250(a) requires the WIA Adult and Dislocated Worker programs to make all of the core services available in at least one comprehensive One-Stop Career Center in each local workforce investment area. This requirement holds these two programs to a different level of responsibility than other One-Stop partner programs, which are only required to provide core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser Act. This NPRM proposes to drop the last sentence of paragraph (a), eliminating the requirement that WIA Adult and Dislocated Worker program partners make all of the core services available at the center. This change would mean Wagner-Peyser funds could be used to provide most necessary core services, freeing WIA funds for use in providing intensive and training services. All three services (core, intensive and training) must be available in a local area. However, this change will result in less overlap between WIA title I and Wagner-Peyser activities. We also propose to amend Sections 663.100(b)(1), 663.145(a) and 663.150 to reflect this change.

Part 663—Adult and Dislocated Worker Activities Under Title I of the Workforce Investment Act

1. Use of Title I Funds

Section 663.145 of the regulations requires local areas to ensure that all three types of WIA funded services (*i.e.*, core, intensive and training) are made available to adults and dislocated workers in the local area, but gives the Local Boards discretion to determine the appropriate mix of the three types of services. There exists some ambiguity as to whether this provision is intended to preclude States from having input over the appropriate mix of services provided in local areas. The provision is not intended to do that. The intent of the provision is to ensure that funds are used for all services while allowing for an appropriate level of discretion in determining the mix of services. Where a State wishes to develop a policy regarding the mix of services to be provided throughout the State, such as setting a minimum percentage level of expenditure for training services, we find that is an appropriate policy decision for the State to make.

Our regulations generally give States the authority to set statewide policies and procedures governing the workforce investment system. We see no compelling reason why a State cannot set similar policies regarding the mix of services, provided that it ensures that all three services are available within a local area for adults and dislocated workers. Accordingly, so as not to preclude State policymaking in this area, this NPRM proposes to modify § 663.145(a) by adding the phrase ''subject to policies established by the State'' at the beginning of the third sentence.

2. Sequence of Services

This NPRM would change the provisions of the current regulations at §§ 663.160, 663.220, 663.240, and 663.310(a) to clarify the sequence of service requirement. As drafted, the current regulations may unintentionally lead some States and local program operators to interpret the regulations to require that all participants must participate first in core services for a specified period of time before moving to intensive services; must then participate in intensive services for a specified period of time before moving to training services; with the test for each move being whether the participant could obtain suitable employment through the services

received during that time period. This interpretation has sometimes resulted in needed services being denied or delayed.

This NPRM clarifies that a local area must make a determination that in order to obtain employment more than core services are needed for an individual to receive intensive services, or that more than intensive services are needed for an individual to receive training services. However, this requirement does not mean that the individual must go through layers of service to prove that need; the determination of need itself can be a core and/or intensive service, such as an assessment or development of an Individual Employment Plan. Thus, a case worker could initially sit down with a participant at a One-Stop Career Center, assess his or her skills and the labor market, and determine that the core or intensive services will not be enough to lead to employment. The provision of training or other needed services can then be provided sequentially, concurrently, or in whatever order makes the most sense for the individual. This is less prescriptive than current rules because it provides more flexibility to enroll individuals in intensive and training services without going through a cumbersome process of sequential services.

The resources of all of the One-Stop partner programs should be taken into account when determining the appropriate mix of activities and services to be provided. Once a participant has become part of the WIA system, she/he should be able to receive whatever services are needed to reach an employment goal.

3. Subpart E Eligible Training Providers

Subpart E describes the methods by which organizations qualify as eligible providers of training services under WIA. It also describes the roles and responsibilities of Local Boards and the State in managing this process. The establishment of an Eligible Training Provider system under WIA was intended to promote the concept of consumer choice in the selection of providers, based on performance information collected on providers, which would determine their eligibility to provide training to WIA participants and receive funding through Individual Training Accounts. In order to ensure the strong relationship between the eligible provider process and program performance, § 663.530 established a maximum eighteen-month period for an organization's initial determination as an eligible training provider.

During the first five years of WIA implementation, there has been ongoing frustration throughout the system regarding the ETP requirements. In some cases entire Statewide educational systems, such as community colleges, considered opting out of providing training to WIA participants due to the requirements for continued performance data on all students, including non-WIA participants. Through a recent report being developed for the Department of Labor, we understand that San Diego does not have any community colleges on the Eligible Training Provider list because they had all opted out of the system. Further evidence of this problem comes from waiver requests, which show that of 353 State requests for waivers during the first five years of WIA, 86 were requests related to the Eligible Training Provider requirements, which led the Department to revisit its interpretation of the statutory language in these provisions. Based on this experience, it appears that regulatory provisions may have led to limiting the availability of qualified training providers to WIA training participants, which is contrary to the intent of customer choice. Until statutory amendments can be considered in a reauthorization bill, we have determined that certain regulatory relief is needed.

Current law, at WIA Section 122, provides that the Governor must establish levels of initial determination of eligibility and the criteria for all subsequent eligibility determinations, and such criteria may require the Local Board to maintain performance outcomes for training institutions it uses, as well as requiring information from the providers themselves. This NPRM would revise the regulation at § 663.530 by removing references to time limits on initial eligibility to clarify that the Governor has maximum flexibility within the law to establish methods of applying for and maintaining the eligibility of providers on a State-approved list of Eligible Training Providers, with input from Local Boards. Specific time periods for initial and/or subsequent eligibility reviews are no longer provided, but are to be determined in the Governor's procedures.

The WIA statute, in section 122(b)(2), describes the procedures to establish initial eligibility and the role that Local Boards must play in the development of the application criteria, as well as in the development of procedures to establish subsequent eligibility under section 122(c). Governors must continue to ensure that the applicable procedures for determining provider eligibility comply with these provisions.

Part 664—Youth Activities Under Title I of the Workforce Investment Act

1. Individual Training Accounts for Youth

Section 664.510 prohibits participants in the youth program from accessing Individual Training Accounts unless the individual is over 18 and is co-enrolled in the WIA Adult or Dislocated Worker program. This regulation is amended to allow youth participants from 16 to 17 years of age to use Individual Training Accounts (ITAs). Such accounts may be appropriate for certain youth participants and removing this prohibition provides States and local areas with the flexibility to expand the range of services available to all youth participants and increase the amount of youth training. The Department of Labor has approved waivers of this regulatory prohibition, which would no longer be necessary under this proposed amendment.

We originally prohibited ITAs for youth participants based on a narrow reading of the allowable activities for youth. In particular, we contrasted the market-based nature of ITAs with the requirement that providers of youth services be competitively selected based on the providers' ability to meet the needs of youth and found them incompatible. At this time, based upon nearly eight years of experience in administering the youth program, we have reconsidered this narrow reading. The adult and dislocated worker programs have shown that when provided the right information and properly advised, participants make intelligent choices regarding their training needs.

The Department has issued 23 waivers of the prohibition on use of ITAs for youth. States receiving waivers have shown that when offered as part of a comprehensive program of youth services, properly advised youth participants can also benefit from consumer choice. Accordingly, we have changed our interpretation of WIA to find that it does not prohibit the use of ITAs for youth participants and propose to remove the regulatory prohibition to that effect. Consistent with current waivers, we expect that ITAs would be used for those youth who, after assessment, show they have the maturity and information to make good decisions about their training options. We are particularly interested in comments from the waiver States about whether their experience with Youth ITAs has shown that participating youth

have demonstrated the ability to make successful training decisions.

Part 667—Administrative Provisions Under Title I of the Workforce Investment Act

1. General Fiscal and Administrative Rules Applicable to Title I of WIA

We propose to amend § 667.200 to more clearly express our policies regarding certain grant-making issues. These provisions clarify the Department's authority to permit grantees to enter into sub-grants with other organizations, our authority to require recipients of discretionary grants under WIA title I to contribute a portion of cash or in-kind contributions to the project (*e.g.*, matching funds), and our authority to enter into interagency agreements to transfer and receive funds from other Federal agencies. WIA gives the Department the discretion to include such terms in our discretionary grants. As the agency charged with administering WIA, we find that the purposes of WIA are generally better served when our funding efforts result in sustainable ongoing projects. For our direct grants, one way to achieve this goal is to require that recipients of WIA funds commit to contribute a portion of resources toward the project. This requirement derives from our authority as a grant making agency, and is consistent with WIA requirements for demonstration grants under WIA sec. 171(b)(2)(A), which contemplates that recipients of such funds will provide joint funding. We have relied on this authority to require a grantee share in projects that are designed to develop ongoing, sustainable results, and propose to formalize this interpretation by adding a new paragraph (h) to § 667.200.

The overall funding structure of WIA is based upon the relationships between grantor, grantee and subgrantee, as primarily evidenced through the formula funding mechanisms. As part of the Secretary's responsibility for testing the effectiveness of innovative pilot and demonstration programs, it is often useful to replicate this relationship in discretionary grants.

This strategy has proven especially effective when used to fund intermediary organizations, which are able to increase the participation of smaller organizations in the workforce investment system by entering into subgrants with such organizations. For the past several years, ETA has made demonstration grants to intermediary organizations in order to oversee and provide administrative assistance to projects from small faith- and community-based organizations. Our Office of Faith-Based and Community Initiatives views these projects as effective in increasing the participation of these smaller organizations. The intermediary can manage the grant and provide technical assistance, freeing up the small nonprofit to do what it does best: accessing and serving underserved populations in the community with which it has ties. An evaluation of some of these projects is in process. The report Compassion at Work: Promising Practices, available at *http://www.dol.gov/cfbci/Promising_Practices.pdf*, provides examples of these intermediary grants at work. Also, currently one of ETA's most effective Youth Offender Grants operates as an intermediary model, with the Latino Coalition acting as an intermediary to dozens of smaller FBCOs. Thanks to this model, organizations that otherwise would not have been able to access government funds are providing effective services to adjudicated and at risk youth. We propose to formalize this authority by adding a new paragraph (i) to § 667.200.

An important part of the Secretary's responsibilities as administrator of WIA is to promote and encourage participation of other Federal agencies in the workforce investment system and the coordination of other Federal programs with services provided through the One-Stop system. To perform these duties, it is often advantageous to the agencies to enter into a formal agreement to coordinate and work together to a common purpose. Under WIA sec. 189, the Secretary has the authority to transfer funds to, or to receive funds from, another agency under such agreements. Section 189(b) authorizes the Secretary to accept funds in furtherance of the purposes of WIA title I; sec. 189(c) authorizes the Secretary to enter into such agreements and make such payments as are necessary to carry out WIA title I; and under sec. 189(e) the Secretary is authorized to use the facilities and services of other Federal agencies. Read together, these provisions authorize the Secretary to enter into an interagency agreement under sec. 189(c) to either accept an interagency transfer of funds under sec. 189(b) or to transmit an interagency transfer of funds under sec. 189(e) to purchase the services of another Federal agency. We propose to formalize this authority by adding a new paragraph (j) to § 667.200.

2. Definition of Administrative Costs

In anticipation of WIA reauthorization, we are seeking comments on the way we define the WIA functions and activities that constitute the costs of administration subject to the administrative cost limit. The current WIA regulations, at § 667.220(b), enumerate the specific functions associated with administrative costs. However, there is evidence that under the current regulations, program funds are being used for what would normally be considered administrative costs. Current regulations specify that awards to subrecipients and vendors that are solely for the performance of administrative functions are classified as administrative costs, but do not allocate all the costs incurred by subrecipients or vendors which perform administrative functions as well as programmatic services or activities between those two cost categories, which could lead to abuse of funds. To the extent that this occurs, it reduces the amount of funding that is used to provide training and other direct services to individuals.

We believe that program operations will improve and levels of service will increase if we more broadly and accurately define administrative costs to minimize the extent that overhead and administrative functions are charged to the program cost category. We expect that WIA reauthorization will take steps toward such reform, and we seek stakeholder input to inform the reauthorization process. One approach to reform would be to more extensively enumerate the items that should be considered administrative costs, making clear that this is not an exhaustive list. An additional measure would be to clarify that administrative cost limits apply to subrecipients and vendors just as they do to primary grant recipients. Although we propose no regulatory amendment at this time, we invite comments from stakeholders regarding their experience with the existing definition of administrative costs, and the impact it has on program services. We are particularly interested in input on our suggested approaches and other ideas for developing a more accurate definition.

3. Grievance Procedures

A basic principle of administrative law holds that an executive agency cannot be sued in Federal or State court unless the party bringing the suit has first exhausted the administrative remedies made available by the agency. (See *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U.S. 41, 50–51 (1938); *McKart* v. *United States,* 395 U.S. 185 (1969); Pierce. Administrative Law Treatise sec. 15.2, 4th Ed.) This holds true for cases arising under WIA. In

order to avoid any potential misconceptions, we propose to amend § 667.600(h) and to add a new paragraph (e) to § 667.610 to clearly state this principle.

V. Administrative Information

Effect on Family Well-Being

The Department certifies that this notice of proposed rulemaking has been assessed in accordance with 5 U.S.C. 601, note, [section 101(h), title VI, section 654 of Pub. L. 105–277], for its effect on family well-being. The Department concludes that the rule will not adversely affect the well-being of the nation's families.

Executive Order 12866, Regulatory Planning and Review

The Department of Labor has determined that this proposed rule is not an economically significant regulatory action under sec. 3(f)(1) of Executive Order 12866. While this rule modifies existing rules that provide terms and conditions governing the expenditure of Federal funds by the States, the rule itself will not: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof. Because this NPRM may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, this is a significant regulatory action, which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

Executive Order 13132, Federalism

In the August 2000 Final Rule implementing WIA regulations, we determined that 20 CFR 652.215 has Federalism implications because it may have a direct effect on the States' personnel management policies. The existing regulation places restrictions on the States to the extent it requires all employees providing services under the Wagner-Peyser Act to be subject to a system of merit-staffing. Because of this, we engaged in extensive consultations with representatives of State government in the development of the current rule. Based in part on those consultations and on the general consultations described below, we have decided to ease the restrictions imposed by the current rule. Under the proposed rule, States are no longer required to use merit staff employees to provide Wagner-Peyser funded services. The intent of the provision is to return authority and responsibility to State governments. Therefore, we have found it unnecessary to engage in additional issue-specific consultations at this time.

With respect to this NPRM as a whole, many of the changes proposed in this rule are in response to concerns raised by States and other stakeholders since WIA's enactment in August 1998. The Department of Labor has become aware of these issues through its continuous contact with States and other workforce investment system partners, which takes place through meetings, conferences, forums, correspondence, and individual interactions. As noted above, we undertook extensive consultative efforts with our stakeholder partners, including officials from State and local governments and their respective organizations, as part of our efforts to improve the workforce investment system through reauthorization. We have identified one provision that potentially has federalism implications. In amending §§ 652.202 and 662.100 to require that Employment Service offices exist within comprehensive One-Stop Career Centers we have had to narrow state flexibility in order to achieve national policy goals. We intend to continue to work closely with State government officials and others in the implementation of the proposed rule.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

Regulatory Flexibility and Regulatory Impact Analysis

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. ''Small entities'' are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided), and small governmental entities (those in areas with fewer than 50,000 residents). We have assessed the potential impact of this proposed rule on small entities. This proposed rule implements policy changes to the regulations governing the expenditure of Federal grant funds by States. Because the rule only modifies existing rules that provide terms and conditions governing the expenditure of Federal funds by the States, we have determined that it will not have a significant impact on a substantial number of small governments or other small entities. We are transmitting a copy of our certification to the Chief Counsel for Advocacy for the Small Business Administration.

While this proposed rule governs the administration and expenditure of funds appropriated by Congress, the rule itself does not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Accordingly, under the Congressional Review Act, subtitle E of the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that this is not a major rule, as defined in 5 U.S.C. 804(2).

Unfunded Mandates

This proposed rule modifies existing rules that provide terms and conditions governing the expenditure of Federal funds by the States. For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, it does not include any Federal mandate that may result in increased expenditures by any State, local, and tribal governments.

List of Subjects in 20 CFR Parts 652, 661 Through 664 and 667

Employment, Grant programs—Labor, Reporting and recordkeeping requirements, Youth.

Signed at Washington, DC this 12th day of December.

Emily Stover DeRocco,

Assistant Secretary of Labor.

For the reasons provided in the preamble, 20 CFR Chapter V is proposed to be amended as follows:

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

1. The authority for part 652 continues to read as follows:

Authority: 29 U.S.C. 49k.

2. Section 652.202 is revised to read as follows:

§ 652.202 May local Employment Service Offices exist outside of Comprehensive One-Stop Career Centers?

No, local Employment Service Offices may not exist outside of comprehensive One-Stop Career Centers. Local Employment Service Offices must be located at, and fully integrated into, each comprehensive One-Stop Center established under 20 CFR 662.100(c).

3. Section 652.205 is amended by revising paragraph (b)(1) to read:

§ 652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?

* * * * *

(b) * * *

(1) The activity otherwise meets the requirements of the Act, and its own requirements.

* * * * *

4. Section 652.215 is revised to read as follows:

§ 652.215 Must Wagner-Peyser Act-funded services be provided by merit-staff employees?

No, Wagner-Peyser Act-funded services are not required to be provided by merit-staff employees.

§ 652.216 [Removed]

5. Section 652.216 is removed.

PART 661—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 661 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105–220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 661.110 is amended by revising paragraph (b) to read as follows:

§ 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?

* * * * *

(b) The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of title I of WIA, and in which State and local partners have the flexibility to implement systems and deliver services in a manner designed to best achieve the goals of WIA based on their particular needs. This system should involve the private sector to ensure that it meets the needs of business customers by providing adults and youth with the necessary educational, occupational, and other skills training and services needed for high-demand occupations in the 21st century. The underlying vision of the Department is to bring together resources devoted to employment, education and economic development, and use them strategically to create opportunities for current and future workers while building the skilled workforce that American industries need to remain globally competitive. The WIA regulations provide the framework in which State and local officials can exercise flexibility within the confines of the statutory requirements. Wherever possible, system features such as design options and categories of services are broadly defined, and are subject to State and local interpretation.

* * * * *

3. Section 661.200 is amended by revising paragraph (i)(3) to read as follows:

§ 661.200 What is the State Workforce Investment Board?

* * * * *

(i) * * *

(3) The director of the designated State unit, as defined in section 7(8)(B) of the Rehabilitation Act, as representative of the State Vocational Rehabilitation Services program (VR program). In a State with more than one designated State unit, the VR program director of the unit serving the greatest number of individuals with disabilities in the State must be appointed as the representative of the VR program, unless the VR program directors agree to permit a different Vocational Rehabilitation director to be the representative. Only one VR program director may sit on the Board, but that program director must represent both units.

* * * * *

4. Section 661.205 is amended by adding paragraph (b)(3) to read as follows:

§ 661.205 What is the role of the State Board?

* * * * *

(b) * * *

(3) Development and review of statewide policies for the One-Stop Career Center system, which may include:

(i) Criteria for issuing certifications of the One-Stop Centers;

(ii) Policies relating to the appropriate roles of One-Stop operators;

(iii) Approaches to facilitating equitable and efficient cost allocation in One-Stop delivery systems; and

(iv) Strategies for effective outreach to individuals and employers who could benefit from One-Stop services and policies.

* * * * *

5. Section 661.220 is amended by adding paragraph (f) to read as follows:

§ 661.220 What are the requirements for submission of the State Workforce Investment Plan?

* * * * *

(f) Upon expiration of a five-year plan submitted under the Workforce Investment Act of 1998, a State may meet the plan submission requirements of paragraph (a) by filing a plan covering a portion of a five-year planning period in accordance with planning guidelines issued under paragraph (b). In unusual circumstances, the Secretary may, through appropriate guidance, provide other options by which a State may meet the plan submission requirements of paragraph (a) of this section.

6. Section 661.240 is amended by revising paragraph (b)(2) to read as follows:

§ 661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?

* * * * *

(b)(2)(i) Subject to paragraph (b)(2)(ii) of this section, a State may submit a unified plan meeting the requirements of the Interagency guidance entitled *State Unified Plan, Planning Guidance for State Unified Plans Under Section 501 of the Workforce Investment Act of 1998,* in lieu of completing the individual State planning guidelines of the programs covered by the unified plan.

(ii) Following the expiration of the five-year WIA and Wagner-Peyser portion of a unified plan, a State may submit a new WIA and Wagner-Peyser portion of such plan in accordance with planning guidelines issued by the Secretary of Labor.

* * * * *

§ 661.290 [Amended]

7. Section 661.290 is amended by removing paragraph (d).

8. Section 661.300 is amended by revising paragraph (b) to read as follows:

§ 661.300 What is the Local Workforce Investment Board?

* * * * *

(b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the statewide workforce investment system within the local area and oversees the proper

administration of funds under title I of WIA.

* * * * *

9. Section 661.305 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 661.305 What is the role of the Local Workforce Investment Board?

* * * * *

(c) In cooperation with the chief elected official, the Local Board oversees the proper administration of funds in local areas under title I of WIA.

* * * * *

10. Section 661.335 is amended by adding paragraph (e) to read as follows:

§ 661.335 What is a youth council, and what is its relationship to the Local Board?

* * * * *

(e) An alternative entity is not required to have a youth council. However, it is required to perform the duties of a youth council specified in WIA section 117(h)(4).

11. Section 661.350 is amended by revising paragraph (d) to read as follows:

§ 661.350 What are the contents of the local workforce investment plan?

* * * * *

(d) Upon expiration of a five-year plan submitted under the Workforce Investment Act of 1998, the Governor may permit local areas to:

(1) Submit a new plan, which may be met by filing a plan covering a portion of a five-year planning period;

(2) Modify its existing plan for an additional year; or

(3) Extend its existing plan for an additional year.

§ 661.410 [Amended]

12. Section 661.410 is revised by removing paragraph (c).

PART 662—DESCRIPTION OF THE ONE-STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 662 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105–220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 662.100 is amended by revising paragraph (d) introductory text and adding paragraph (f), to read as follows:

§ 662.100 What is the One-Stop delivery system?

* * * * *

(d) While each local area must have at least one comprehensive center (and may have additional comprehensive centers), WIA section 134(c) allows for arrangements to supplement the center. Except as provided in paragraph (f) of this section, these arrangements may include:

* * * * *

(f) A stand-alone Employment Service office is not permitted to qualify under paragraph (d) of this section as an affiliated site; a component of a network of One-Stop partners; or a specialized center.

3. Section 662.250 is amended by revising paragraph (a) to read as follows:

§ 662.250 Where and to what extent must required One-Stop partners make core services available?

(a) At a minimum, the core services that are applicable to the program of the partner under § 662.220, and that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program, must be made available at the comprehensive One-Stop Center. These services must be made available to individuals attributable to the partner's program who seek assistance at the center.

* * * * *

PART 663—ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 663 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105–220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 663.100 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

§ 663.100 What is the role of the Adult and Dislocated Worker programs in the One-Stop delivery system?

* * * * *

(b) * * *

(1) Core services for adults and dislocated workers must be made available, as required by 20 CFR 662.250(a), in at least one comprehensive One-Stop Center in each local workforce investment area. * * *

* * * * *

3. Section 663.145 is amended by revising paragraph (a) to read as follows:

§ 663.145 What services are WIA title I Adult and Dislocated Workers formula funds used to provide?

(a) WIA title I formula funds allocated to local areas for Adults and Dislocated Workers must be used to provide core, intensive and training services through the One-Stop delivery system. Under 20 CFR 662.250, WIA Adult and Dislocated Worker funds must be used to make available core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser Act. Subject to policies established by the State, Local Boards determine the most appropriate mix of these services, but all three types must be available for both adults and dislocated workers. There are different eligibility criteria for each of these types of services, which are described at §§ 663.110, 663.115, 663.220 and 663.310.

* * * * *

4. Section 663.150 is amended by revising paragraph (a) to read as follows:

§ 663.150 What core services must be provided to adult and dislocated workers?

(a) At a minimum, all of the core services described in WIA section 134(d)(2) and 20 CFR 662.240 must be provided in each local area through the One-Stop delivery system. Under 20 CFR 662.250, WIA Adult and Dislocated Worker funds must be used to make available core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser Act.

* * * * *

5. Section 663.160 is revised to read as follows:

§ 663.160 Are there particular core services an individual must receive before receiving intensive services under WIA section 134(d)(3)?

No. To be eligible for intensive services, WIA requires that the local area determine that an individual is unlikely or unable to obtain or retain employment through core services and is in need of intensive services in accordance with the requirements of § 663.220. The determination of the need for intensive services under § 663.220 must be contained in the participant's case file.

6. Section 663.220 is revised to read as follows:

§ 663.220 Who may receive intensive services?

There are two categories of adults and dislocated workers who may receive intensive services:

(a) Adults and dislocated workers who are unemployed, and who are determined by a One-Stop operator to be unlikely or unable to obtain employment through core services and to be in need of intensive services to obtain employment; and

(b) Adults and dislocated workers who are employed, and who are determined by a One-Stop operator to be in need of intensive services to obtain

or retain employment that leads to self-sufficiency, as described in § 663.230.

7. 663.240 is revised to read as follows:

§ 663.240 Are there particular intensive services an individual must receive before receiving training services under WIA section 134(d)(4)(A)(i)?

No. To be eligible for training services, WIA requires that the local area determine that an individual is unlikely or unable to obtain or retain suitable employment through intensive services and is in need of training services as provided in § 663.310. The determination of the need for training services under § 663.310 may be established through an individual employment plan, a comprehensive assessment or in any other manner, but documentation of the determination must be contained in the participant's case file.

8. Section 663.310 is amended by revising paragraph (a) to read as follows:

§ 663.310 Who may receive training services?

* * * * *

(a) Have met the eligibility requirements for intensive services under § 663.220 and have been determined unlikely or unable to obtain or retain employment through such services.

* * * * *

9. Section 663.530 is revised to read as follows:

§ 663.530 Is there a time limit on the period of initial eligibility for training providers?

Yes, under WIA section 122(c)(5), the Governor must require training providers to submit performance information and meet performance levels annually in order to remain eligible providers following the expiration of the period of initial eligibility. As part of the procedures developed under § 663.515(c)(1), the Governor must establish the period of initial eligibility. Such procedures may include a process for extending the period of initial eligibility in appropriate circumstances.

PART 664—YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 664 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105–220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 664.510 is revised to read as follows:

§ 664.510 Are Individual Training Accounts allowed for youth participants?

Yes, a local program may choose to provide the occupational skills training element through an Individual Training Account or similar mechanism. In addition, individuals age 18 and above, who are eligible for training services funded under the Adult and Dislocated Worker programs, may receive Individual Training Accounts through those programs. Requirements for concurrent participation requirements are set forth in § 664.500. To the extent possible, in order to enhance youth participant choice, all youth participants should be involved in the selection of educational and training activities.

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 667 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105–220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 667.200 is amended by adding paragraphs (h), (i), and (j) to read as follows:

§ 667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?

* * * * *

(h) *Grantee's share.* Where appropriate, the Secretary may require recipients of discretionary grants under WIA title I to contribute a portion of cash or in-kind contributions to the project. For competitive grants, the amount of the contribution will be specified in the Solicitation for Grant Applications.

(i) *Subgrants.* Where appropriate, the Secretary may authorize recipients of discretionary grants under WIA title I to distribute grant funds to other organizations through subgrants. For competitive grants, the conditions under which grantees may enter into such subgrants will be specified in the Solicitation for Grant Applications.

(j) *Interagency agreements.* Where appropriate, the Secretary may enter into a memorandum of understanding, interagency agreement or other agreement with other Federal agencies under which the Secretary may transfer funds to, or accept funds from, the other agencies.

3. Section 667.600 is amended by revising paragraph (h) to read as follows:

§ 667.600 What local area, State and direct recipient grievance procedures must be established?

* * * * *

(h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized by other Federal, State of local law. However, the Department of Labor may not be made a party to another lawsuit until the administrative remedies under this section have been exhausted.

4. Section 667.610 is amended by adding paragraph (e) to read as follows:

§ 667.610 What processes do we use to review State and local grievances and complaints?

* * * * *

(e) The Department of Labor may not be made a party to another lawsuit until the applicable administrative remedies under subparts F and G of this part have been exhausted.

[FR Doc. E6–21766 Filed 12–19–06; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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