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

DEPARTMENT OF AGRICULTURE

Office of the Secretary of Agriculture

7 CFR Part 2

RIN 0524–AA33

Revisions of Delegations of Authority

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture to the Under Secretary for Research, Education, and Economics (FEE) to carry out a program of entering into agreements with veterinarians under which they provide veterinary services in veterinarian shortage situations as authorized by the National Veterinary Medical Service Act (NVMSA) (7 U.S.C. 3151a). This rule also further delegates this authority from the Under Secretary for REE to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES).

DATES: *Effective Date:* March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Gary Sherman, National Program Leader, Veterinary Science, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue, SW., Washington, DC 20250–2220, (202) 401–4952, *gsherman@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION: In 2003 NVMSA, 7 U.S.C. 3151a, authorized the Secretary of Agriculture to carry out the Veterinary Medicine Loan Repayment Act program. In fiscal year 2006 the first funding for this program was appropriated to CSREES of the United States Department of Agriculture (USDA). Not having previously delegated the authority to implement the NVMSA program, the Secretary of Agriculture is delegating the authority to implement this program to CSREES. In accordance with the authorizing legislation, CSREES is prepared to lead a collaborative effort with USDA's Food Safety and Inspection Service and Animal and Plant Health Inspection Service to carry out the intent of the authorizing legislation.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553(a)(2), notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, because this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12866. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and is, therefore, exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 808, this rule may be made effective upon publication.

List of Subjects in 7 CFR Part 2

Administrative practice and procedure, Authority delegations (Government agencies).

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICES OF THE DEPARTMENT

■ 1. The authority citation for 7 CFR part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR parts 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary and to the Under Secretaries and Assistant Secretaries

■ 2. Section 2.21 is amended by adding paragraph (a)(1)(lxxxiv):

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(1) * * *

(lxxxiv) Formulate and carry out the Veterinary Medicine Loan Repayment Act program authorized by the National Veterinary Medical Service Act (7 U.S.C. 3151a).

* * * * *

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

■ 3. Section 2.66 is amended by adding paragraph (a)(141) to read as follows:

§ 2.66 Administrator, Cooperative State Research, Education and Extension Service.

(a) * * *

(141) Formulate and carry out the Veterinary Medicine Loan Repayment Act program authorized by the National Veterinary Medical Service Act (7 U.S.C. 3151a).

* * * * *

For Part 2, Subpart C, Paragraph 2.21(a)(1):

Dated: March 12, 2007.

Mike Johanns,

Secretary of Agriculture.

For Part 2, Subpart C, Paragraph 2.66(a):

Dated: March 8, 2007.

Gale A. Buchanan,

Under Secretary, Research, Education, and Economics.

[FR Doc. 07–1308 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[Docket No. : AMS–FV–07–0019; FV–06–704 IFR]

Mushroom Promotion, Research, and Consumer Information Order; Reallocation of Mushroom Council Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends, on an interim basis, provisions of the Mushroom Promotion, Research, and Consumer Information Order (Order) to reapportion membership of the Mushroom Council (Council) to reflect shifts in United States mushroom production. Specifically, the amendments reapportion the Order's four United States geographic regions, and reallocate Council member representation in two of the four United States geographic regions (Regions 1 and 4). The Council, which administers the

Order, proposed the amendments in conformance with Order requirements to review—at least every 5 years and not more than every three years—the geographic distribution of United States mushroom production volume and import volume, and recommend changes accordingly. The amendments will be effective for the 2008 Council appointments.

DATES: Effective date: March 20, 2007. Comments must be submitted on or before April 18, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244–Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; *Fax:* (202) 205–2800. Comments, which should reference the docket number, title of action, date, and page number of this issue of the **Federal Register**, will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Daniel Manzoni, Marketing Specialist, or Sonia N. Jimenez, Chief, Research and Promotion Branch, FV, AMS, USDA, Stop 0244–Room 0634–S, Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free).

SUPPLEMENTARY INFORMATION: This rule is issued under the Mushroom Promotion, Research, and Consumer Information Order [7 CFR part 1209]. The Order is authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act) [7 U.S.C. 6101–6112].

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act provides that any person subject to the Order may file a written petition with the Department of Agriculture (Department) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with law. In any petition, the person may request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the jurisdiction to review the Department's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Initial Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has examined the economic impact of this rule on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $6,500,000 million. Under these definitions, there are 97 producers and 18 importers subject to the Order, and thus, eligible to serve on the Council. The majority of these producers and importers are considered small entities as defined by the Small Business Administration. Producers and importers of less than 500,000 pounds or less of mushrooms for the fresh market are exempt from the Order.

The Order provides for the establishment of a Council consisting of at least four members and not more than nine members. For the purpose of nominating and appointing producers to the Council, the United States is divided into four geographic regions (Regions 1, 2, 3, and 4) with Council member representation allocated for each region based on the geographic distribution of mushroom production. For importers (referred to as Region 5), one Council member seat is allocated when imports, on average, exceeds 35,000,000 pounds of mushrooms annually. The Order also specifies that the Council will review—at least every five years and not more than every three years—the geographic distribution of United States mushroom production volume and import volume, and recommend changes accordingly.

At its June 2006 meeting, the Council reviewed mushroom production volume in the United States and import volume for the July 1, 2002, through June 30, 2005, yearly periods. Based on the data, the Council reviewed and discussed reapportionment proposals. After considerable discussion, the Council approved a reapportionment proposal for recommendation to the Department. The Council recommends reapportionment of the Order's four United States geographic regions, and the reallocation of Council member representation in two of the four United States regions (Regions 1 and 4) to reflect shifts in United States mushroom production.

This rule adopts, on an interim basis, the Council's recommendation to change the four United States geographic regions as follows: Region 1—the States of Colorado, Oklahoma, Wyoming, Washington, Oregon, Florida, Illinois, Tennessee, Texas and Utah; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—all other States including the District of Columbia and the Commonwealth of Puerto Rico. Also, the amendments will change the number of Council member representatives from one member to three members for Region 1 and from two members to zero members for Region 4. Representation for Region 2, Region 3, and importers remain unchanged at three members, two members, and one member, respectively.

The overall impact of the amendments will be favorable for producers and importers because the producers and importers would have more equitable representation on the Council based on United States mushroom production volume and import volume.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule. The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581–0093. In terms of alternatives to this rule, this action reflects the volume thresholds and procedures that have been established previously under the provisions of the Order for reallocation of Council membership.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

Background

The Order is authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112], and is administered by the Council. Under the Order, the Council administers a nationally coordinated program of research, development, and information designed to strengthen the fresh mushroom's position in the market place and to establish, maintain, and expand markets for fresh mushrooms. The program is financed by an assessment of $0.0043 cents per pound on any person who produces or imports over 500,000 pounds of mushrooms for the fresh market annually. Under the Order, handlers collect and remit producer assessments to the Council, and assessments paid by importers are collected and remitted by the United States Customs Service.

The Order provides for the establishment of a Council consisting of at least four members and not more than nine members. For the purpose of nominating and appointing producers to the Council, the United States is divided into four geographic regions (Regions 1, 2, 3, and 4) with Council member representation allocated for each region based on the geographic distribution of mushroom production. For importers (referred to as Region 5), one Council member seat is allocated when imports, on average, exceeds 35,000,000 pounds of mushrooms annually.

Section 1209.30 of the Order provides that at least every five years, the Council should review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years. Based on the review, the Council is required to recommend reapportionment of the regions or modification of the number of members from such regions, or both, to reflect shifts in the geographic distribution of mushroom production volume and importer representation.

The Order provides that each producer region that produces, on average, at least 35 million pounds of mushrooms annually is entitled to one member. Further, each producer region is entitled to an additional member for each 50 million pounds of annual production, on average, in excess of the initial 35 million pounds required to qualify for representation, until the nine seats on the Council are filled. For purposes of this rule and as provided under the Order, ''on average'' reflects a rolling average of production or imports during the last three fiscal years.

Under the current Order, regions and Council member representation for each region are the following: Region 1: Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, New Hampshire, North Dakota, Ohio, Rhode Island, South Dakota, Vermont, Wisconsin, and Wyoming—1 producer member; Region 2: Delaware, Maryland, New Jersey, Pennsylvania, the District of Columbia, West Virginia, and Virginia—3 producer members; Region 3: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington—2 producer members; Region 4: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, the Commonwealth of Puerto Rico, South Carolina, Tennessee, and Texas—2 producer members; and Region 5: Importers—1 member. Based on data for July 1, 2002, through June 30, 2005, there is about 725 million pounds of mushrooms assessed on average annually under the Order. Currently, the Order's Regions 1, 2, 3, 4, and 5 represent 32 million pounds, 382 million pounds, 133 million pounds, 113 million pounds, and 65 million pounds, respectively. Since Region 1 represents 32 million pounds of mushroom production, the region no longer qualifies for member representation because production within the region falls below the 35 million pounds Order requirement.

Based on data for the July 1, 2002, through June 30, 2005, the Order is revised to reapportion membership of the Council to reflect shifts in the geographic distribution of mushroom production. The annual average production of mushrooms for the Order's Regions 1, 2, 3, 4, and 5 as adopted in this rule will be 168 million pounds, 382 million pounds, 109 million pounds, 0 million pounds, and 65 million pounds. As adopted in this rule, Regions 1, 2, and 3 will be comprised of states with mushroom production, and Region 4 will be comprised of all other states with no mushroom production.

Based on a review of United States mushroom production volume and import volume, this interim final rule adopts amendments to change the four United States geographic regions as follows: Region 1—the States of Colorado, Oklahoma, Wyoming, Washington, Oregon, Florida, Illinois, Tennessee, Texas and Utah; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—all other States including the District of Columbia and the Commonwealth of Puerto Rico. Also, the amendments will change the number of Council member representatives from one member to three members for Region 1 and from two members to zero members for Region 4. Representation for Region 2, Region 3, and importers remain unchanged at three members, two members, and one member, respectively. The amendments, which represent shifts in mushroom production volume, will provide more equitable producer and importer representation on the Council based on U.S. mushroom production volumes and import volumes.

Nominations and appointments to the Council are conducted pursuant to §§ 1209.30 and 1209.230. Nominations for Council positions for terms of office that will begin January 1, 2008 will be based on the amendments contained in this rule.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule should be effective as soon as possible to allow the nomination process to be conducted based on the changes to the establishment and membership provision of this rule. The new term of office begins on January 1, 2008. In addition and for the same reasons, a 30-day period is provided for interested persons to comment on this rule.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mushroom promotion, Reporting and recording, requirements.

■ For the reasons set forth in the preamble, 7 CFR part 1209 is amended as follows:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112.

■ 2. Section 1209.230 is revised to read as follows:

§ 1209.230 Reallocation of council members.

Pursuant to § 1209.30 of the Order, the regions and their number of

members on the Council shall be as follows:

(a) *Region 1:* Colorado, Florida, Illinois, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, and Wyoming—3 Members.

(b) *Region 2:* Pennsylvania—3 Members.

(c) *Region 3:* California—2 Members.

(d) *Region 4:* All other States, the District of Columbia, and the Commonwealth of Puerto Rico—0 Members.

(e) *Region 5:* Importers—1 member.

Dated: March 13, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–1315 Filed 3–14–07; 11:37 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business–Cooperative Service

7 CFR Part 4279

RIN 0570–AA26

Business and Industry Guaranteed Loan Program; Technical Correction

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is revising its program regulations to correct an inadvertent omission in a sentence concerning eligibility of debt refinancing. The words ''existing lender debt'' will be added to a sentence that currently limits refinancing to less than 50 percent of the overall loan. The intended effect is to limit existing lender debt refinancing to less than 50 percent of the overall loan.

DATES: *Effective Date:* March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, Loan Specialist, Business and Industry Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224. Telephone: (202) 720–6802; TDD number is (800) 877–8339 or (202) 708–9300; Fax number: (202) 720–6003; e-mail: *brenda.griffin@usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.768, Business and Industry Loans.

Intergovernmental Review

Business and Industry Guaranteed Loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' available in any Rural Development office and on the Internet at *http://rurdev.usda.gov.regs/* and in 7 CFR part 3015, subpart V.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0017, in accordance with the Paperwork Reduction Act (PRA) of 1995. There is no new paperwork burden associated with this correction.

E-Government Act Compliance

RBS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E–GOV compliance related to this proposed rule, please contact Brenda Griffin at (202) 720–6802.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. Since this rule is a technical correction and has no significant economic impact on a substantial number of small entities, a regulatory flexibility analysis was not performed.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given this rule, and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing litigation challenging action taken under this rule unless these regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

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

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Background

A final rule was published in the **Federal Register** on June 8, 2006, concerning tangible balance sheet equity requirements for the Business and Industry Guaranteed Loan Program. The

rule modified existing debt refinancing eligibility language and inadvertently omitted three key words that existed prior to the final rule taking effect. This rule inserts those three words back into the debt refinancing eligibility language.

List of Subjects in 7 CFR Part 4279

Business and industry, Loan programs, Rural areas, Rural development assistance.

■ Accordingly, chapter XLII, title 7, Code of Federal Regulations, is amended as follows:

PART 4279—GUARANTEED LOANMAKING

■ 1. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart B—Business and Industry Loans

■ 2. In § 4279.113, paragraph (r) is revised to read as follows:

§ 4279.113 Eligible loan purposes.

* * * * *

(r) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Except as provided for in § 4279.108(d)(4) of this subpart, existing lender debt may be included provided that, at the time of application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt) and the lender is providing better rates or terms. Subordinated owner debt is not eligible under this paragraph. Unless the amount to be refinanced is owed directly to the Federal government or is federally guaranteed, the existing lender debt refinancing must be a secondary part (less than 50 percent) of the overall loan.

* * * * *

Dated: February 23, 2007.

Jackie J. Gleason,

Administrator, Rural Business—Cooperative Service.

[FR Doc. E7–4920 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–XY–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AH60

Design Basis Threat

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations that govern the requirements pertaining to the design basis threats (DBTs). This final rule makes generically applicable security requirements similar to those previously imposed by the Commission's April 29, 2003 DBT Orders, based upon experience and insights gained by the Commission during implementation, and redefines the level of security requirements necessary to ensure that the public health and safety and common defense and security are adequately protected. Pursuant to Section 170E of the Atomic Energy Act (AEA), the final rule revises the DBT requirements for radiological sabotage, generally applicable to power reactors and Category I fuel cycle facilities, and for theft or diversion of NRC-licensed Strategic Special Nuclear Material (SSNM), applicable to Category I fuel cycle facilities. Additionally, a petition for rulemaking (PRM–73–12), filed by the Committee to Bridge the Gap, was considered as part of this rulemaking. The NRC partially granted PRM–73–12 in the proposed rule, but deferred action on other aspects of the petition to the final rule. The NRC's final disposition of PRM–73–12 is contained in this document.

DATES: *Effective Date:* April 18, 2007.

FOR FURTHER INFORMATION CONTACT: Manash K. Bagchi, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2905, e-mail *MKB2@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

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I. Background

The DBT requirements in 10 CFR 73.1 describe general adversary characteristics that designated licensees must defend against with high assurance. These NRC requirements include protection against radiological sabotage (generally applied to power reactors and Category I fuel cycle facilities) and theft or diversion of NRC-licensed SSNM (generally applied to Category I fuel cycle facilities). On November 7, 2005 (70 FR 67380), the Commission published a proposed rule for public comment seeking to amend its regulation that governs the requirements pertaining to the DBTs. The DBTs are used by licensees to form the basis for site-specific defensive strategies implemented through physical security plans, safeguards contingency plans, and security personnel training and qualifications plans. Amendment of the DBT rule was influenced by a number of factors described below.

Following the terrorist attacks on September 11, 2001, the NRC conducted a thorough review of security practices to ensure that nuclear power plants and other licensed facilities continued to have effective security measures in place to address the changing threat environment. The NRC recognized that some elements of the DBTs required enhancement. After soliciting and receiving comments from Federal, State, and local agencies, and industry stakeholders, and reviewing an analysis of intelligence information regarding the trends and capabilities of potential adversaries, the NRC imposed supplemental DBT requirements by order on April 29, 2003. The Commission deliberated on the responsibilities of the local, State, and Federal stakeholders to protect the nation and the responsibility of the licensees to protect individual nuclear facilities before issuing the April 29, 2003 DBT Orders.

The April 29, 2003 DBT Orders required nuclear power reactors and Category I fuel cycle facility licensees to revise their physical security plans, security personnel training and qualification plans, and safeguards contingency plans to defend against the

supplemental DBT requirements. The orders required licensees to make security enhancements such as: Augmented security forces and capabilities; increased patrols; additional security posts and physical barriers; vehicle checks at greater standoff distances; enhanced coordination with law enforcement and military authorities; augmented security and emergency response training, equipment, and communication; and more restrictive site access controls for personnel, including expanded, expedited, and more thorough initial and follow-on screening of power reactor and Category I fuel cycle facility employees. After gaining experience with implementation of these orders, the Commission concluded that the general attributes of the orders should be generically imposed by regulation on certain classes of licensees.

In addition, PRM–73–12 was filed by the Committee to Bridge the Gap on July 23, 2004, and was published for comment (69 FR 64690; November 8, 2004). PRM–73–12 requests that the NRC amend its regulations to revise the DBT regulations (in terms of the numbers, teams, capabilities, planning, willingness to die, and other characteristics of adversaries) to a level that encompasses, with a sufficient margin of safety, the terrorist capabilities evidenced by the attacks of September 11, 2001. The petition also requests that security plans, systems, inspections, and force-on-force (FOF) exercises be revised in accordance with the amended DBTs, and that a requirement be added to part 73 to construct shields against air attack (the shields are referred to as ''beamhenges'') which the petition asserts would enable nuclear power plants to withstand an air attack from a jumbo jet. The NRC partially granted PRM–73–12 in the proposed rule, but deferred action on other aspects of the petition to the final rulemaking. The NRC's final disposition of PRM–73–12 is discussed in Section VI of this document.

Finally, the Energy Policy Act (EPAct) of 2005 was signed into law on August 8, 2005. Section 651(a) of the EPAct amended the AEA by adding Section 170E, that required the Commission to initiate a rulemaking to revise the DBTs. In addition, Section 170E also directed the Commission to consider but not be limited to, the 12 factors specified in the statute in the course of that rulemaking. As stated in the proposed rule, these factors are:

(1) The events of September 11, 2001;

(2) An assessment of physical, cyber, biochemical, and other terrorist threats;

(3) The potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) The potential for assistance in an attack from several persons employed at the facility;

(5) The potential for suicide attacks;

(6) The potential for water-based and air-based threats;

(7) The potential use of explosive devices of considerable size and other modern weaponry;

(8) The potential for attacks by persons with a sophisticated knowledge of facility operations;

(9) The potential for fires, especially fires of long duration;

(10) The potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals;

(11) The adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility, and

(12) The potential for theft or diversion of nuclear material from such facilities;

The Commission took into account a number of issues and sources in conducting this rulemaking, which included its experience in the implementation of the DBT Orders, the issues raised in PRM–73–12, EPAct requirements, and the public comments on the proposed rule. The Commission has considered and deliberated on the 12 factors identified in the EPAct. The results of its consideration are set forth in Section II of this document. Additionally, the Commission specifically invited public comments on how these factors should be addressed in the rule. Many of the comments received substantively focused on the 12 factors. Those comments and the Commission's responses are also discussed in Section II.

It is important to note that the Commission was careful to set forth rule text in the final rule that does not compromise licensee security, but also acknowledges the necessity to keep the public informed of the types of attacks against which nuclear power plants and Category I fuel cycle facilities are required to defend. To this end, the final rule maintains a level of detail in the rule language that is generally comparable to the previous regulation, while updating the general DBT attributes in a manner consistent with the insights gained from the application of supplemental security requirements imposed by the April 29, 2003 DBT Orders, the EPAct, and consideration of public comments.

The final rule contains the DBT with which licensees must legally comply. More specific details (e.g., specific weapons, ammunition, etc.) are consolidated in adversary characteristics documents (ACDs) which contain classified or Safeguards Information (SGI). The technical bases for the ACDs are derived largely from intelligence information. They also contain classified or SGI that cannot be publicly disclosed. These documents must be withheld from public disclosure and made available only on a need-to-know basis to those who are cleared for access.

Because the regulatory guides (RGs) and the ACDs are guidance documents that provide details to the licensees regarding implementation and compliance with the DBTs, these documents may be updated from time to time as a result of the NRC's periodic threat reviews. The NRC has been conducting threat reviews since 1979. These threat reviews are performed in conjunction with the intelligence and law enforcement communities to identify changes in the threat environment which may, in turn, require adjustments of NRC security requirements. Future revisions to the ACDs would not require changes to the DBT regulations in 10 CFR 73.1, provided the changes remain within the scope of the rule text.

II. Analysis of Public Comments and Consideration of the 12 Factors of the EPAct

The proposed rule provided a 75-day public comment period that ended on January 23, 2006. The comment period was extended by another 30 days in response to a request from the Nuclear Energy Institute (NEI), an industry group, to allow additional time for review of the proposed rule because the comment period overlapped the year-end holidays. The extended comment period ended on February 22, 2006. A total of 919 comments were received from about 903 individuals, one county, 13 citizen groups, one utility involved in nuclear activities, and two nuclear industry groups. The comments covered a range of issues, some of which were beyond the scope of this rulemaking because they were specific to protective measures but did not relate to the adversary characteristics. The comments have been organized under three groups: Group I, Consideration of the 12 Factors in the EPAct; Group II, In-Scope-comments, that includes comments raising issues and concerns directly related to the contents of the DBT rule; and Group III, Out-of-Scope comments, that includes comments raising issues and questions that are not directly related to the DBT rule, although they

are generally relevant to the security of nuclear facilities. Responses are provided in the following format:

Group I: Consideration of the 12 Factors in the Energy Policy Act

The Commission's consideration, public comments, and responses to the public comments are provided for the 12 factors described in Section A.

Group II: In Scope Comments

Comments in Groups II and III are organized under the following general categories. The Commission's responses to these comment categories are provided in Section B:

1. Definition of the Design Basis Threats
2. Applicability of the Enemy of the State Rule
3. Compliance with Administrative Procedure Act (APA) Notice and Comment Requirements
4. Ambiguous Rule Text
5. Differentiation in Treatment of General and Specific Licenses for ISFSI
6. Applicability of the Radiological Sabotage DBT to New Nuclear Power Plants
7. Consideration of the Uniqueness of Each Plant in Application of the DBTs
8. Continued Exemption of Research and Test Reactors from the DBT Requirements
9. Changes in Security Requirements to be Addressed Under Backfit Rule
10. Compliance with the Paperwork Reduction Act
11. Adequacy of the Regulatory Analysis
12. Compliance with the National Environmental Policy Act (NEPA)
13. Issuance of Annual Report Card on Individual Licensees

Group III: Out of Scope Comments

14. Federalization of Security
15. Force-on-Force Tests of Security
16. Screening of Workers in Nuclear Power Plants
17. Self-Sufficient Defense Capabilities
18. Security of Dry Cask Storage
19. Security of Spent Fuel Pools
20. Inherent Design Problems that make Reactors Vulnerable

A Comments Matrix has been provided in Appendix A, that references each topic with comments. The NRC's response to each topic is listed below:

Section A

Group I. Consideration of the 12 Factors in the Energy Policy Act

As discussed above, Section 170E of the AEA, as amended by Section 651(a) of the EPAct, directed the Commission to consider but not be limited to, the 12 factors specified in the statute in the course of the DBT rulemaking. Many of the comments received by the Commission focused on one or more of these factors. Prior to discussing the substance of the 12 factors, the Commission notes that several commenters charged that the Commission violated Section 170E by not considering some of the 12 factors, and by deferring final consideration of some of the provisions to the final rule. Those commenters suggested that this not only violated the mandate of Section 170E, but also the Administrative Procedure Act (APA) by not providing adequate notice of the substance of the rule, and thus, the rule should be withdrawn and re-proposed.

To be clear, Section 170E stated that the Commission ''shall consider,'' but not be limited to, the 12 factors when conducting the DBT rulemaking. However, the EPAct did not require that the Commission explicitly include any of the 12 factors in the proposed or final rule text. The Commission carefully considered intelligence information, vulnerability assessments, other Commission-sponsored studies, and each of the 12 factors in formulating the final rule. Accordingly, a number of provisions or rule changes were adopted that specifically incorporate certain language used in the 12 factors. For instance, the final rule contains specific provisions related to multiple, coordinated groups [1] of attackers (Factor 3), suicide attacks (Factor 5), insider assistance (Factors 4 and 8), and waterborne attacks (Factor 6). Additionally, based on the 12 factors, public comment, and other intelligence and law enforcement information, the Commission has decided to explicitly include a cyber threat as an attribute of the DBTs (Factor 2).

After careful consideration, the Commission also chose not to adopt elements related to some EPAct factors as part of the rule text. However, that decision should not be misconstrued as lack of consideration of the factors themselves. Nor should the Commission's statement in the proposed rule soliciting comments on ''whether or how the 12 factors should be addressed in the DBT rule'' be interpreted to mean that the Commission deferred consideration of the factors until after it received comments. Rather, the Commission proposed requirements that would require licensees to defend against threats the Commission considered appropriate at that time, subject to change in the final rule after further consideration of public comments.

Several commenters specifically charged that the Commission deferred its consideration of air-based threats to the final rule, thus undermining stakeholders' abilities to know the Commission's position on that factor. At the time that the proposed rule was published, the Commission maintained its view that protection against airborne attack could best be provided by the strengthening of airport and airline security measures. Accordingly, the Commission did not propose to include a provision in the proposed rule that would require licensees to provide defense against an airborne attack but the Commission specifically sought comment on the issue in the proposed DBT rule and has remained open to changing its position. In addition to being raised in PRM–73–12, the Commission has received numerous comments on the airborne threat. It has carefully considered those comments and has responded to them below. The assertion about the lack of APA notice with regard to the EPAct's 12 factors is without merit. The proposed rule discussion contained, under a section designated ''Proposed Regulations,'' (70 FR 67381) a detailed listing and clarifying discussion of the 12 factors and a specific request for public comment on ''whether or how the 12 factors should be addressed in the DBT rule.'' (70 FR 67382).

Factor 1. The Events of September 11, 2001

The Commission's Consideration: The events of September 11, 2001, have been central to the Commission's efforts in reevaluating the DBTs. As a result of these attacks, the NRC promptly reevaluated the DBTs and imposed additional requirements on licensees through orders, including the April 29, 2003 Orders on the DBTs. A number of revisions to the DBTs have resulted from consideration of the events of September 11, 2001. Those revisions include increased adversaries' willingness to kill or be killed, and the capability to operate in several different modes of attack, including multiple adversary groups, and multiple adversary entry points.

Public Comment: Several commenters specifically challenged the proposed rule's consideration of the events of September 11, 2001, expressing concern

[1] For purposes of this rule, there is no substantive difference between the terms ''group'' and ''team'' in reference to the operational capabilities of the DBT adversary force. The meaning of the term ''group'' is the same as the meaning of the term ''team'' used in the proposed rule. The term ''team'' was preserved in this final rule only when summarizing comments on the proposed rule or the 12 Factors of the EPAct.

that the DBT rule does not require licensees to defend against a number of attackers comparable to the number of terrorists (19) who participated in the attacks on September 11, 2001.

Response to Public Comment: The Commission disagrees with the comment. The Commission's consideration of the number of attackers comprising the DBT is discussed in more detail below under Factor 3. However, with respect to the assertion that the number of attackers should be comparable to the number of September 11, 2001, attackers (19), the Commission notes that the official U.S. Government terrorism report for 2001, ''Patterns of Global Terrorism,'' states that the September 11, 2001, attacks consisted of ''four separate but coordinated aircraft hijackings,'' not a single attack involving 19 assailants. However, in its annual terrorism report for 2001, the Federal Bureau of Investigation (FBI) considered the attacks as one act of international terrorism by ''four coordinated teams of terrorists.'' Consideration of seemingly inconsistent views was just one part of a significant statistical analysis conducted by the NRC as part of the post-September 11, 2001, DBT process to determine the DBT adversary force size. In summary:

- NRC position: Disagrees with the comment.
- Action: No action required.

Factor 2. An Assessment of Physical, Cyber, Biochemical, and Other Terrorist Threats

The Commission's Consideration: Although the DBT rule does not elaborate on the specifics of vehicle bomb size, numbers of adversaries, or exact types of weapons for operational security purposes, the Commission believes they are appropriate. The DBTs are the result of the NRC's continuous evaluation of current threats. That evaluation is not limited to a particular kind of threat, but naturally includes consideration of physical threats, cyber threats, and biochemical threats. The DBT rule reflects the Commission's determination of the composite set of adversary features against which private security forces should reasonably have to defend.

The DBT rule has been amended in several significant respects to reflect the current physical, cyber, biochemical, and other terrorist threats. For example, the radiological sabotage DBT has been enhanced to reflect the requirement that the licensees have a capability to defend against attackers with the ability to operate in several modes of attack, including as multiple groups, attacking from multiple entry points. Additionally, in § 73.1(a)(1)(i)(C), the phrase ''up to and including'' was changed to simply ''including'' to provide flexibility in defining the range of weapons available to the composite adversary force.

One significant change to the rule relates to physical threats from the use of vehicles, either as modes of transportation or as vehicle bombs. Section 73.1(a)(1)(i)(E), for example, effectively expands the scope of vehicles available for the transportation of adversaries by deleting the reference to ''four-wheel drive'' and by adding water-based vehicles.

In addition, § 73.1(a)(1)(iii) (the land vehicle bomb provision) is similarly revised to delete the ''four-wheel drive'' limitation, and to add a capability that the vehicle bomb ''may be coordinated with an external assault,'' maximizing its destructive potential. Further, an entirely new capability has been added to the DBT involving a waterborne vehicle bomb, which also is encompassed in the coordinated attack concept.

The Commission has also carefully considered biochemical threats both before and after the events of September 11, 2001. The previous rule already contained requirements that provided the capability of using ''incapacitating agents,'' and that attribute has been retained in the final rule. In addition, armed responders are required to be equipped with gas masks to effectively implement the protective strategy and mitigate the effects of the incapacitating agents.

Public Comment: Although many of the public comments could generally be characterized as addressing Factor 2, only a few comments specifically fell under this factor. One commenter stated that the NRC needs to engage independent experts to develop a comprehensive computer vulnerability and cyber attack threat assessment, that must evaluate the vulnerability of the full range of nuclear power plant computer systems and the potential consequences of these vulnerabilities. The commenter further suggested that the revised DBTs must incorporate these findings and include a protocol for quickly detecting such an attack and recovering key computer functions in the event of an attack.

Two other commenters stated that the regulations do not reflect protections against explosive devices of considerable size, other modern weaponry, and cyber, biochemical, and other terrorist threats. Another commenter did not believe the proposed DBTs protected against all conceivable attacks, such as launching a large explosive device from a boat, clogging the water intakes, dropping a conventional bomb into spent fuel pools, insider sabotage, etc.

Response to Public Comment: Regarding the threat of cyber attack comment, the NRC agrees with the statement submitted by the commenter and explicitly included a cyber attack as an element of the DBTs in the final rule. The basis for this addition, and implications of the rule change are discussed further in Section III of this document. In addition, the proposed 10 CFR 73.55(m), ''Digital Computer and Communication Networks,'' that is included in the proposed rule, ''Power Reactor Security Requirements,'' (71 FR 62664; October 26, 2006), contains proposed measures to mitigate a cyber attack.

With respect to the other comments regarding protection against explosives of considerable size and modern weaponry, as stated earlier, the details of the adversary capabilities can not be specified publicly, but the Commission believes they are appropriate. Furthermore, the land vehicle bomb assault may be coordinated with an external assault, maximizing its destructive potential.

The NRC does not intend the DBTs to represent ''worst case'' scenarios or all conceivable attacks. It is impossible to address all possible attack scenarios, because there is no theoretical limit to what attack scenarios can be conceived. Therefore, the NRC staff considers the tactics that have been observed in use, discussed, or trained for by potential adversaries. These tactics and DBT provisions are subjected to an interagency review process where Federal law enforcement and intelligence community agencies comment and provide feedback. If changes develop in adversary tactics that could significantly impact nuclear facility security, the staff would request that the Commission consider these tactics for inclusion in the DBT provisions. In summary:

- NRC position: Agrees with one element of comment—include cyber threat as an attribute; disagrees with the other two elements.
- Action: Final rule includes cyber attack as an explicit element of the DBTs. No other action required.

Factor 3. The Potential for Attack on Facilities by Multiple Coordinated Teams of a Large Number of Individuals

The Commission's Consideration: The number of attackers and the tactics used by those attackers is now and has always been a core consideration of the DBT. Although the NRC obviously

cannot comment on the size (specific number of attackers) of the DBT adversary force for operational security reasons, it can address the process how these numbers are derived. As noted in the Commission's consideration of Factor 1, the size of the DBT adversary force and the number of assault teams were derived through a careful and deliberative process involving not only the NRC staff, but Federal law enforcement, and intelligence community, and homeland security agencies using a variety of classified and unclassified sources. A statistical analysis was done on terrorist group size by looking at hundreds of terrorist attacks over several years, and comparing them with previous group size analyses for changes in long-term trends. Large ''outlier'' terrorist events, although few in number, were included in this analysis. This statistical analysis was factored into a parallel analysis of known terrorist attacks against protected facilities (also few in number) and terrorist training, tactics, and doctrinal manuals concerning armed assaults against facilities.

In addition, the NRC found that the vague qualifiers (''several persons'' and ''small group'') in the previous adversary descriptions in 10 CFR 73.1 did little to add to the clarity of the rule because the phrases are highly subjective. Thus, the final rule now contains the more specific language ''by an adversary force capable of operating in each of the following modes: a single group attacking through one entry point, multiple groups attacking through multiple entry points, a combination of one or more groups and one or more individuals attacking through multiple entry points, or individuals attacking through separate entry points.'' By revising the language in the rule and eliminating the reference to ''several persons'' and ''small group,'' the NRC actually increased the potential flexibility of the design basis adversary. The use of multiple adversary groups is not necessarily tactically advantageous to the attacking force in all possible scenarios. In some instances, the adversary force, as simulated in Force-on-Force (FOF) exercises can, based on its analysis of the licensee's protective strategy, concentrate its force in a single group if necessary to best attack a facility. In other instances, a licensee's protective strategy may be more vulnerable to multiple groups of attackers attempting entry from different locations. In any event, the final DBT rule now provides enough flexibility to account for all of these scenarios, while the guidance provides sufficient specificity.

Public Comment: Several commenters contend that for nuclear power plants, the regulations should provide protection against coordinated attacks by multiple large groups of up to two dozen sophisticated and knowledgeable adversaries.

Response to Public Comment: As stated above, the Commission has revised the rule to reflect these considerations and to provide maximum flexibility in developing threat scenarios which licensees must defend against. In summary:

- NRC position: Agrees partially with the comment.
- Action: No additional action required, beyond adoption of more specific language in the final rule.

Factor 4. The Potential for Assistance in an Attack From Several Persons Employed at the Facility

The Commission's Consideration: The Commission has always considered the threat of insider assistance to be a very real and significant threat. Thus, the DBTs have long contained a provision requiring licensees to protect against insider assistance. Also, other NRC regulations contain substantial requirements for access authorization programs (10 CFR 73.56, ''Personnel Access Authorization Requirements for Nuclear Power Plants,'' and 10 CFR 73.57, ''Requirements for Criminal History Checks of Individuals Granted Unescorted Access to a Nuclear Power Facility or Access to Safeguards Information by Power Reactor Licensees''). However, the final rule has amended this requirement to expand the threat of insider assistance. For instance, 10 CFR 73.1(a)(1)(A) and (2)(i)(A) add language indicating that the adversaries have ''sufficient knowledge to identify specific equipment or locations necessary for a successful attack.'' Therefore, this provision suggests that this knowledge could be obtained from an insider who has such knowledge.

The insider assistance provision itself has also been revised. The final rule deletes the term ''individual'' to provide flexibility in defining the number of persons who may be involved in providing inside assistance.

Public Comment: One commenter stated that the insider attribute must include an active participant in an attack and should include the possibility of first responders and or National Guardsmen providing insider assistance.

Response to Public Comment: The NRC agrees with part one of this comment. The capability of ''active'' insider assistance is clearly stated in both 10 CFR 73.1(a)(1)(i)(B) for radiological sabotage and 10 CFR 73.1(a)(2)(i)(B) for theft or diversion of strategic special nuclear material. Further, the ''active'' assistance capability has long been a component of the DBTs. The use of the conjunction ''or'' provides for increased tactical flexibility on the part of the adversary, based on the specific situation. It does not preclude an active insider in favor of a passive one.

The NRC disagrees with the second part of this comment. National Guard, local law enforcement and other non-licensee security personnel already stationed at the owner-controlled boundary or entry portals of some licensee facilities are not part of the licensee workforce and not subject to NRC regulatory authority; hence, they are considered beyond the scope of the DBTs. Typically, these organizations have their own internal screening procedures to determine reliability and trustworthiness. The NRC recognizes that those processes exist and provide an appropriate level of assurance against an insider threat to that organization. Furthermore, first responders, law enforcement, and National Guard personnel are not given unescorted access to the Protected Area (PA).

First responders, law enforcement, and other external security personnel responding to an emergency or security event at a site would do so according to established emergency response protocols. If a particular responding organization had been penetrated by an adversary insider, then that adversary would be considered an external adversary for purposes of the DBTs. The requirement that licensees protect against ''A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions,'' as described in §§ 73.1(a)(1)(i), and 73.1(a)(2)(i), anticipates such an adversary. In summary:

- NRC Position: Agrees with the first element of the comment, disagrees with the second element of the comment.
- Action: No action required.

Factor 5. The Potential for Suicide Attacks

The Commission's Consideration: The final rule contains language reflecting the potential for suicide attacks. This level of commitment has been assumed since the first DBTs were established by the NRC. Language has been added to §§ 73.1(1)(i)(A) and 73.1(2)(i)(A) indicating that potential adversaries have the attribute of a willingness to ''kill or be killed.''

Public Comment: No public comment received.

Response to Public Comment: No response required.

Factor 6. The Potential for Water-Based and Air-Based Threats

a. *The Commission's Consideration:* Certainly one of the most substantial considerations of the Commission, NRC licensees, the Federal government, and the public is the threat of airborne attacks against critical infrastructures. As stated below, the vast majority of comments received by the Commission on the proposed DBT rule regarded the airborne threat. The Commission has been evaluating the issue of air-based threats long before it was required by the EPAct, and its position on the necessity to add this attribute to the DBTs prior to this rulemaking has been well documented. The Commission's evaluation of the airborne threat has been an ongoing process, and it has spent a significant amount of time and resources as part of this rulemaking in considering whether to make some type of airborne threat part of the DBTs. Ultimately, the Commission has determined that active protection against the airborne threat requires military weapons and ordnance that rightfully are the responsibilities of the Department of Defense (DOD), such as ground-based air defense missiles, and thus, the airborne threat is one that is beyond what a private security force can reasonably be expected to defend against. This does not mean that the Commission is discounting the airborne threat; merely that the responsibility for actively protecting against the threat lies with other organizations of the Federal government, as it does for any U.S. commercial infrastructures.

Beyond active protection, the Commission believes that some considerations involving airborne attack relate to the development of specific protective strategies and physical protection measures that are not within the scope of the DBTs. The deployment of ground-based air defense weapons would be a decision for the Departments of Defense, Homeland Security, Transportation and Justice, not the NRC. In addition, the NRC believes that application of ground-based air defense weapons would present significant command and control challenges, particularly relating to the time required to identify and confirm the presence of a hostile aircraft and for a commercial entity to get permission to engage. The potential for collateral damage to the surrounding community also would have to be considered. Deployment of protective measures such as no-fly zones, combat air patrols, and ground-based air defenses are undertaken by many other Federal organizations working on preventing and protecting critical infrastructure from terrorist attacks, including the U.S. Northern Command (USNORTHCOM) and North American Aerospace Defense Command (NORAD), the Transportation Security Administration (TSA), and the Federal Aviation Administration (FAA). The FAA has issued a Notice to Airmen (NOTAM) strongly advising pilots to avoid the airspace above, or in proximity to, such sites as power plants (nuclear, hydro-electric, or coal), dams, refineries, industrial complexes, military facilities and other similar facilities. Pilots are warned not to loiter in the vicinity of these types of facilities. The significant increase in aviation security since September 11, 2001, goes a long way toward protecting the United States, including nuclear facilities, from an aerial attack. Some of these improvements include:

- Criminal history checks on flight crew;
- Reinforced cockpit doors;
- Checking of passenger lists against ''no-fly'' lists;
- Increased control of cargo;
- Random inspections;
- Increased Federal Air Marshal presence;
- Improved screening of passengers and baggage;
- Federal Flight Deck Officer Program;
- Controls on foreign passenger carriers;
- Requirements on charter aircraft;
- Enhanced vigilance of flight training; and
- Improved coordination and communication between civilian and military authorities.

In February 2002, the Commission, in addition to the actions of other Federal entities, directed nuclear power plant licensees to develop specific plans and strategies to respond to a wide range of threats, including the impact of an aircraft attack. NRC staff conducted mock exercises to practice imminent air attack responses with each licensee. The NRC has continued to work with licensees on these issues and has inspected licensee actions to identify and implement mitigation strategies to limit the effects of such an event. The NRC has conducted detailed, site-specific engineering studies of a limited number of plants to gain insights on potential vulnerabilities of nuclear power plants to deliberate attacks involving large commercial aircraft. The results of these studies have confirmed the effectiveness of the February 2002 NRC-ordered mitigative measures, and have identified the need for some additional enhancements. For the facilities analyzed, the studies confirm the low likelihood of both damaging the reactor core and releasing radioactivity that could affect public health and safety. Even in the unlikely event of a radiological release due to a terrorist use of a large aircraft against a nuclear power plant, the studies indicate that there would be time to implement the required on-site mitigating actions. These results have also validated the potential radioactive source term for off-site emergency planning basis. Nevertheless, on June 20, 2006, the NRC issued orders to appropriate power reactor licensees requiring the implementation of additional key radiological protection and mitigation strategies to reduce potential consequences from the loss of large areas of the plant due to large fires or explosions. This information is discussed in, ''In the Matter of Operating Power Reactor Licensees Identified in Attachment 1; Orders Modifying Licensees (Effective Immediately),'' (71 FR 36554; June 27, 2006). Additional studies are being considered to further assess mitigative capabilities. The NRC will continue to coordinate with the Department of Homeland Security (DHS) on this initiative. (See Factor 9 for further discussion of a related topic, ''The potential for fires, especially fires of long duration.'')

Finally, in early March 2006, the NRC hosted an Interagency Aircraft Attack Tabletop Exercise at NRC Headquarters. Representatives from the DHS, the DOD/USNORTHCOM, and the FBI attended. The purpose of the exercise was to explore Federal responsibilities and interfaces, consistent with the National Infrastructure Protection Plan and National Response Plan, for terrorist incidents at nuclear power plants, with a focus on an aircraft attack on the facility. The tabletop exercise reconfirmed the respective responsibilities of the participating organizations (NRC, DHS, DOD, and FBI) in the event of a nuclear plant aircraft attack and clarified protocols for response-related interagency communication and coordination.

The final DBT contains two new provisions that account for the capability of a water-based attack, as discussed under Factor 2. These capabilities were included based on conclusions drawn from the NRC's continuing review of intelligence information and liaison with Federal law enforcement, intelligence community, and homeland security

agencies. Sections 73.1(a)(1)(i)(E) and 73.1(a)(2)(i)(E) add the capability to use water-based vehicles for transporting personnel and equipment to the proximity of vital areas. Sections 73.1(a)(1)(iv) and 73.1(a)(2)(iv) add a new provision for a waterborne vehicle bomb assault. The NRC has concluded that defense against these new DBT provisions will provide a high-assurance of protection against the waterborne threat.

Public Comment: Approximately 820 comments indicated that the ''beamhenges'' concept or similar barrier method of protection should be considered for protection against airborne attacks. As generically described by the commenters, a ''beamhenge'' shield is constructed out of an interlocking series of steel I-beams and cables that would be built at sufficient stand-off distances from safety-related buildings at nuclear power plants to protect against an aircraft attack. Comments also indicated that a ''no-fly'' zone should be imposed around nuclear power plants and that ground based-air defense systems should be deployed to protect each site.

Further, multiple commenters expressed concerns regarding the vulnerabilities of nuclear power plants and other licensed facilities to terrorist waterborne attacks. Commenters suggested that the revised DBTs should require nuclear power plants and other licensed facilities situated on navigable waterways to be equipped with visible, engineered physical barriers.

Response to Public Comment: The Commission has spent considerable time and resources considering the threat of airborne and waterborne attacks on nuclear facilities. Based on these considerations, the NRC has chosen a two-track approach to respond to these threats in order to assure adequate protection. First, the NRC has determined that active protection against the airborne threat rests with other organizations of the Federal government, such as NORTHCOM and NORAD, TSA, and FAA. The NRC will continue to test these relationships through exercises. Second, licensees have been directed to implement certain mitigative measures to limit the effects of an aircraft strike. To the extent that commenters have suggested the imposition of specific physical security measures such as the ''beamhenges'' concept, the NRC has considered on the issue, but has rejected the concept because it believes that the mitigation measures in place are sufficient to ensure adequate protection of the public health and safety.

With respect to the waterborne attack threat, the DBT rule has been revised to reflect two new water-based capabilities. However, requirements of physical barriers for the protection of the nuclear power plants and other licensed facilities under waterborne attack are not in the scope of DBT rule. Requirements for physical barriers are addressed in a separate rulemaking to amend 10 CFR 73.55. The security requirements in the proposed rulemaking that would amend 10 CFR 73.55 (71 FR 62664; October 26, 2006) address protective strategies and security measures for nuclear power plants and other licensed facilities under waterborne attacks, and require licensees to defend against the DBTs. In summary:

- NRC Position: Agrees with the waterborne comment. Disagrees with ''no-fly'' zones and ''beamhenges'' concept comments.
- Action: No action required.

Factor 7. The Potential Use of Explosive Devices of Considerable Size and Other Modern Weaponry

The Commission's Consideration: As part of its consideration of Factor 2, the Commission assessed the potential use of explosive devices of considerable size and other modern weaponry. The Commission notes that the DBTs have been revised to specifically reflect these two considerations. First, §§ 73.1(a)(1)(i)(C) and 73.1(a)(2)(i)(C) were amended to revise the phrase ''up to and including'' to simply ''including'' to increase the flexibility in defining the available range of weapons. Second, the vehicle bomb threat has been expanded to include waterborne vehicles. This factor has been further articulated in Factor 2.

Public Comment: Refer to Factor 2.

Response to Comment: Refer to Factor 2.

In summary:

- NRC Position: Agrees with the comment.
- Action: No action required.

Factor 8. The Potential for Attacks by Persons With a Sophisticated Knowledge of Facility Operations

The Commission's Consideration: As noted above under the discussion of Factor 4, §§ 73.1(a)(1)(i)(A) and 73.1(a)(2)(i)(A) added language indicating that the adversaries have ''sufficient knowledge to identify specific equipment or locations necessary for a successful attack.''

Public Comment: No public comment received.

Response to Comment: No response required.

Factor 9. The Potential for Fires, Especially Fires of Long Duration

The Commission's Consideration: The DBTs describe specific adversary characteristics against which licensees must be prepared to defend. Fires, in contrast, are not adversary characteristics, but result from a particular adversary attack. Nevertheless, the NRC considered fires resulting from several possible initiating events, both accidental and malicious in nature. The NRC conducted vulnerability assessments for some operating nuclear power plants in the 1970s and 1980s to establish the technical basis for security requirements. The NRC also routinely evaluated the potential impacts of terrorist attacks on power reactors as part of the FOF exercise program on a plant-by-plant basis. After the terrorist attacks on September 11, 2001, the NRC promptly assessed the potential for and consequences of terrorists targeting a nuclear power plant, including its spent fuel storage facilities, for an aircraft attack, the physical effects of such a strike, and how compounding factors (e.g., fires, meteorology, etc.) would affect the impact of potential radioactive releases. As part of a comprehensive assessment, the NRC conducted detailed site-specific engineering studies of a limited number of nuclear power plants to assess potential vulnerabilities of deliberate attacks involving a large commercial aircraft. Additional Commission considerations are provided under the discussion of Factor 6. A summary of the assessment study is available in a publicly available document.

Public Comment: One commenter stated that the proposed rule did not consider the potential for fires, especially fires of long duration and thus asserts that the proposed rule does not comply with the Congressional directive because it fails to mention the fire threat.

Response to Public Comment: The NRC disagrees with the statement submitted by the commenter. As stated above, the NRC considered fire to be a result of several possible threats. Adversary forces, bombs, and explosives can all result in fires, and potentials for fires have been considered during the DBT rulemaking process. The following is provided as background information related to this comment.

As part of a larger NRC effort to enhance the safety and security of the Nation's nuclear power plants, an initiative was undertaken as part of a February 2002 NRC Order. The order required licensees to look at what might

happen if a nuclear power plant lost large areas due to explosions or fires. The licensees then were required to identify and later implement strategies that would maintain or restore cooling for the reactor core, containment building, and spent fuel pool. The requirements listed in Section B.5.b of this order directed licensees to identify ''mitigative strategies'' (meaning the measures licensees could take to reduce the potential consequences of a large fire or explosion) that could be implemented with resources already existing or ''readily available.'' The NRC held inspections in 2002 and 2003 to identify if licensees had implemented the required mitigative strategies.

These inspections, as well as additional studies, showed significant differences in the strategies implemented by the plants. As a result, the NRC developed additional mitigative strategy guidance. The guidance was based on ''lessons learned'' from NRC engineering studies and included a list of ''best practices'' for mitigating losses of large areas of the plant. Each plant was requested to consider implementation of applicable additional strategies by August 31, 2005. The NRC inspected each plant in 2005 to review their implementation of any additional mitigative measures. The NRC is continuing to ensure licensees appropriately implement these measures.

Finally, aircraft attack, another threat likely to result in fires was also considered and studies analyzing the consequences of successful commercial airline attacks were performed. In conducting these studies, the NRC drew on national experts from several DOE laboratories using state-of-the-art structural and fire analyses. The NRC also enhanced its ability to realistically predict accident progression and radiological release consequences. For the facilities analyzed, the studies found that the likelihood of both damaging the reactor core and releasing radioactivity that could affect public health and safety is low. Even in the unlikely event of a radiological release due to terrorist use of a large aircraft, there would be time to implement mitigating actions and off-site emergency plans such that the NRC's emergency planning basis remains valid (71 FR 36554; June 27, 2006). Additional site-specific studies of operating nuclear power plants are underway or being planned to determine the need, if any, for additional mitigating capability on a site-specific basis. In summary, the NRC considered the potential for fires during the DBT rulemaking process, as required by the EPAct.

- NRC position: Disagrees with the comment.
- Action: No action required.

Factor 10. The Potential for Attacks on Spent Fuel Shipments by Multiple Coordinated Teams of a Large Number of Individuals

The Commission's Consideration: As stated in response to Factor 3, the Commission considered the potential for attacks on nuclear facilities by multiple coordinated groups of a large number of individuals. The number of attackers and the tactics used by those attackers is now and has always been a core consideration of the DBTs. In addition, the Commission has considered the potential for attacks on spent fuel shipments and issued an order, requiring specific protective measures. The Commission is planning to propose a rule on spent fuel shipments in the near future.

Public Comment: No public comment received.

Response to Public Comment: No response required.

Factor 11. The Adequacy of Planning To Protect the Public Health and Safety at and Around Nuclear Facilities, as Appropriate, in the Event of a Terrorist Attack Against a Nuclear Facility

The Commission's Consideration: The DBT rule does not include requirements imposing specific emergency planning considerations. Nevertheless, the Commission considered the implications of security-related incidents on emergency planning. As part of those efforts, following the terrorist attacks of September 11, 2001, the NRC evaluated the emergency preparedness (EP) planning basis and determined that the planning basis for nuclear power reactors remains valid. Further, the NRC issued orders requiring compensatory measures for nuclear security and safety, and observed licensee performance during security-based EP drills and exercises and security FOF exercise evaluations. Also, the NRC reviewed current public radiological protective action guidance, and discussed security-based EP issues with various stakeholders, including licensees and Federal, State and local government officials. Based on the information obtained from the reviews and evaluations, the NRC determined that EP of nuclear power plants could be enhanced. The Commission approved the communication of enhancements to EP and response actions for security-based events to power reactor licensees. NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events,'' dated July 18, 2005, communicated enhancements in the following areas:

- Security-based emergency classification levels and emergency action levels;
- A 15 minute prompt notification to the NRC for security-based events;
- On-site protective actions to maximize personnel safety during security-based events;
- Enhanced emergency response organization augmentation; and
- Development of a security-based emergency drill and exercise program.

As of February 18, 2006, all power reactor licensees have implemented the enhancements to their EP programs with the exception of the drill and exercise program. A majority of nuclear power plant licensees indicated that adoption of the security-based EP drill and exercise program is contingent on NRC and the Department of Homeland Security (DHS) endorsement. The NRC continues to work with DHS and the Nuclear Energy Institute to develop and implement a security-based drill and exercise program at power reactor licensees. This program is being conducted in a phased approach. Tabletop drills at four power reactor sites and a facility drill were conducted successfully, and areas for improvement were identified and incorporated by the industry into draft guidelines. Over the next three years, the industry plans to conduct security-based EP drills at each power reactor licensee with an end state of the integration of security-based EP scenarios into the biennial EP exercise program.

In addition to those security-related emergency planning efforts, the NRC and DHS worked together to develop and improve EP for a terrorist attack through federal initiatives such as comprehensive review programs and integrated response planning efforts. The NRC and DHS have enhanced the coordination of integrated EP programs through evaluations of licensee and State/local/tribal response capabilities, and reviews of critical infrastructure preparedness and response plans for commercial nuclear power plants. Our combined efforts have resulted in specific enhancements to security-related EP measures, and continued improvement in capabilities for licensees and off-site response organizations to respond to a wide spectrum of events.

Public Comment: No public comment received.

Response to Public Comment: No response required.

Factor 12. The Potential for Theft or Diversion of Nuclear Material From Such Facilities

The Commission's Consideration: The DBT rule includes two separate components, the DBT of radiological sabotage, and the DBT of theft or diversion of formula quantities of special nuclear materials. Although the legal requirements of the radiological sabotage DBT and the theft or diversion DBT, as embodied in the rule text of §§ 73.1(a)(1) and in 73.1(a)(2), respectively, are the same, the ACDs and RGs differ in describing how power reactor and Category I fuel cycle facility licensees should implement and comply with the separate rules. These differences are classified and are not elaborated on here.

As stated in 10 CFR 73.55(a), power reactor licensees are only required to protect against the threat of radiological sabotage. Spent fuel is not an attractive theft or diversion target due to its large physical size and high thermal heat and radioactivity (most power reactor spent fuel is considered ''self-protecting''). As stated in the response to Group III Comments No. 18 (Security of Dry Cask Storage) and 19 (Security of Spent Fuel Pools), the NRC has required that licensees take additional security and mitigating measures against a radioactive release of spent fuel.

The NRC has authorized the Duke Energy Corporation, owner and operator of the Catawba plant, to irradiate four fuel assemblies of Mixed-Oxide (MOX) fuel at the Catawba plant on a test basis as part of its license amendment issued on March 3, 2005. MOX fuel technically meets the criteria of a formula quantity of Strategic Special Nuclear Material, in this case plutonium, and would be subject to the DBT provisions of § 73.1(a)(2) for theft or diversion. However, the NRC staff found that MOX fuel is not attractive to potential adversaries from a theft and diversion standpoint at the reactor site due to its low plutonium concentration, composition, and form (size and weight). The MOX fuel consists of plutonium oxide particles dispersed in a ceramic matrix of depleted uranium oxide with a plutonium concentration of less than six weight percent. The MOX fuel assemblies are the same form as conventional fuel assemblies designed for a commercial light-water power reactor and are over 12 feet long and weigh approximately 1,500 pounds. A large quantity of MOX fuel and an elaborate extraction process would be required to yield enough material for use in an improvised nuclear device or weapon. On the ''attractiveness'' bases, the NRC staff found that the complete application of 10 CFR 73.45(d)(1)(iv), 73.46 (C)(1), 73.46(h)(3), 73.46(b)(3)–(b)(12), 73.46(d)(9), and 73.46(e)(3) for MOX fuel was not necessary. The staff therefore approved the exemptions requested to these regulations, finding that they were authorized by law, and will not endanger life or property or the common defense and security, and that are otherwise in the public interest. The Commission later approved this determination in an adjudicatory order issued on June 20, 2005. Duke Energy Corporation (Catawba Nuclear Station, Units 1 and 2), CLI–05–014, 61 NRC 359,363 (2005).

Furthermore, transportation of the MOX fuel assemblies to Catawba will be done by the Department of Energy's (DOE's) Office of Secure Transportation, that has legal responsibility for the MOX fuel assemblies until custody is transferred to the licensee. Afterwards, the spent MOX fuel is cooled and stored like other spent fuel on site and is subject to the radiological sabotage DBT while stored in the spent fuel pool inside the Protected Area of the plant.

Public Comment: No public comment received.

Response to Public Comment: No response required.

Section B

Group II. In Scope Comments

1. Defining the ''Design Basis Threat''

Public Comment: Multiple commentators expressed concern that the NRC has not publicly defined or explained the ''design basis threat.'' Specifically, commenters were unclear what the Commission means by the statement that the DBTs are based on a ''determination as to the attacks against which a private security force can reasonably be expected to defend.'' These commenters suggested that the Commissions's failure to articulate the DBT concept creates an ambiguity in establishing the division of responsibility between NRC licensees and the DOD, or DHS. Several commenters suggested that if the NRC does not require plants to defend against air attack because it is unreasonable for a private security force to be able to do so, then it has no choice but to federalize security by requesting that DHS or the military assume full responsibility for the protection of nuclear power facilities.

Other commenters suggested that the NRC's rationale for limiting the characteristics of the DBTs to the attacks against which a private security force could reasonably be expected to defend appears to be based on cost considerations, which is not permitted for measures that are necessary for the protection of public safety.

Other commenters representing the nuclear industry, while agreeing that the DBT scope must be clear, asserted that the DBT can not be greater than the largest threats against which private sector facilities can reasonably be requested to defend themselves, and threats beyond the DBT are reasonably the responsibility of the national defense system.

Response to Public Comment: The Commission has determined that the DBTs, as articulated in the rule, are based on adversary characteristics against which a private security force can reasonably be expected to defend. This formulation provides the Commission with the flexibility necessary to make reasoned, well-informed decisions regarding the DBTs. In contrast, detailed, prescriptive criteria would be unduly restrictive, and would unnecessarily limit the Commission's judgment. This judgment is guided by the Commission's considerable expertise in nuclear security matters, developed over the course of 30 years of experience regulating the physical protection of nuclear facilities.

With regard to the federalization of nuclear plants security forces, the Commission does not have the authority to federalize nuclear security forces and cannot demand deployment of military forces to protect nuclear facilities. Nor has Congress chosen to require these measures. As it has stated publicly many times, the Commission is confident that neither measure is necessary or even prudent. A primary reason for this is that the introduction of a federalized nuclear security force or military unit to provide day-to-day security would create command and control issues for plant management because it would essentially establish two classes of employees at commercial nuclear facilities, both of whom would be responsible for reactor safety in the event of a terrorist attack. This could result in a reduction in the licensee's ability to ensure reactor safety. In contrast, the continued use of private nuclear security officers responsible to the licensee maintains a unitary command structure focused on a unitary objective. The tightly-regulated private nuclear security forces in use today are well trained on the unique security considerations specific to nuclear power facilities and through rigorous FOF training have proven themselves to be effective and reliable. These conclusions were also documented when the Commission originally studied the issue

in 1976 in a report to Congress titled the ''Security Agency Study.''

The DBT rule is also guided by the Commission's knowledge that, in addition to being among the most robust industrial facilities in the world, nuclear power plants are arguably the most physically secured industrial facilities. No other civilian industry security force is subject to as much regulatory oversight as the nuclear industry. However, the Commission acknowledges that the use of private security forces to defend nuclear power facilities faces limitations. For instance, there are legal limitations on the types of weapons and tactics available to private security forces. Generally, nuclear security officers have access only to weapons that are available to civilians. Although authority recently granted the Commission under the EPAct of 2005 will allow the Commission to authorize the use of more sophisticated weaponry, the most powerful weapons and defensive systems will remain reserved for use only by the military and law enforcement. Thus, it would be unreasonable to establish a DBT that could only be defended against with weapons unavailable to private security forces. In addition, the Commission previously decided not to require licensees to defend against attacks by ''Enemies of the State'' as defined by 10 CFR 50.13.

However, these limitations on weapons and defensive systems available to private security forces do not undermine the Commission's confidence in those forces to provide adequate protection. The defense of our nation's critical infrastructure is a shared responsibility between the NRC, the DOD, the DHS, Federal and State law enforcement, and other Federal agencies. A reasonable approach in determining the threat requires making certain assumptions about these shared responsibilities. Although licensees are not required to develop protective strategies to defend against beyond-DBT events, it should not be concluded that licensees can provide no defense against those threats.

The Commission's regulations at 10 CFR 73.55(a) require power reactor licensees' security programs to provide ''high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.'' Within this requirement is the expectation that, if confronted by an adversary beyond its maximum legal capabilities, on-site security would continue to respond with a graded reduction in effectiveness. The Commission is confident that a licensee's security force would respond to any threat no matter the size or capabilities that may present itself. The Commission expects that licensees and State and Federal authorities will use whatever resources are necessary in response to both DBT and beyond-DBT events.

Several commenters felt that the DBT rule should define clearly demarcated boundaries where the responsibilities of the licensee end and those of the Government begin for defending nuclear facilities. In the Commission's view, establishing set boundaries demarcating a division of responsibilities is neither possible nor desirable. The better approach is for the Commission to continue its efforts to encourage licensees and Government organizations to integrate and complement their respective security and incident-response duties so that facilities subject to the DBTs have the benefit of all available incident-response resources during the widest possible range of security events. Currently, these integrated response planning efforts include prearranged plans with local law enforcement and emergency planning coordination. Licensees also must comply with event reporting requirements to the NRC so that a Federal response is readily available, if necessary.

However, the DBTs are not defined by cost considerations, as suggested by several commenters. The rule text set forth at § 73.1 represents the largest adversary against which the Commission believes private security forces can reasonably be expected to defend. Thus, when the DBT rule is used by licensees to design their site specific protective strategies, the Commission is thereby provided with reasonable assurance that the public health and safety and common defense and security are adequately protected. The Commission agrees with the commenters that it may not legally consider economic factors in determining the level of adequate protection of public health and safety and common defense and security (Union of Concerned Scientists v. NRC, 824 F.2d 108, 117118 (D.C. Cir. 1987)), and it did not do so in deciding what level of protection it considers to be adequate in this rulemaking. Rather, as the Commission has clearly set forth above, the requirements in the DBT rule are determined by the Commission's consideration of the staff's threat assessments based on coordination with law enforcement, intelligence, and homeland security agencies, the Commission's considerable experience in these matters, and the legal limitations on security forces available to licensees. In contrast, the Commission's determination of specific aspects of implementation of and compliance with the DBT rule, as described in the ACDs and regulatory guidance, may involve consideration, along with other factors, of the relative costs of various methods of implementing particular requirements of the DBTs. In summary:

- NRC position: Disagrees with the comments.
- Action: No action required.

2. Applicability of the Enemy of the State Rule

Public Comment: Several commenters also suggested that the proposed rule does not clearly distinguish between a threat posed by an ''enemy of the state'' excluded by 10 CFR 50.13, and threats covered by the DBTs. They asserted that the phrase ''enemy of the state'' is ambiguous and can no longer be relied on to preclude the development of defensive measures at nuclear power plants. Those commenters again expressed concern that the division of responsibilities between the licensees and the national defense system are ambiguous.

Other commenters argued that the Commission has failed to explain why the DBTs exclude an ''Al-Qaeda like terrorist organization'' as an ''enemy of the state'' notwithstanding the Commission's statements in the vehicle bomb rulemaking, that described the characteristics of an ''enemy of the state,'' that seemingly would have included organization like an Al-Qaeda.

Commenters representing industry stated that licensees are not and should not be required to defend against threats posed by enemies of the United States. They argued that the DBTs represent the largest threat against which a private security force can reasonably be expected to defend, and that any escalation of this adversary would be inconsistent with 10 CFR 50.13. These threats are properly the responsibility of the national defense establishment and other security agencies.

Response to Public Comment: The enemy of the state rule, 10 CFR 50.13, was promulgated in 1967 amid concerns that Cuba might launch attacks against nuclear power plants in Florida. That rule (32 FR 13455; September 26, 1967) was primarily intended to make clear that privately-owned nuclear facilities were not responsible for defending against attacks that typically could only be carried out by foreign military organizations. By contrast, the DBT rule does not focus on the identity,

sponsorship, or nationality of the adversaries. Instead, it affirmatively defines a range of attacks and capabilities against which nuclear power plants and Category I fuel cycle facilities must be prepared to defend. An adversary force that falls outside of the range of attacks against which nuclear facilities are reasonably expected to defend is considered to be ''beyond-DBT,'' regardless of whether it would or would not be deemed an ''enemy of the state.'' The Commission disagrees that any extension of the DBTs automatically conflicts with 10 CFR 50.13. The Commission may revise the DBTs in response to changes in the threat environment without necessarily implicating 10 CFR 50.13. To be clear, ''beyond-DBT'' and ''enemy of the state'' are not equivalent concepts. In addition, improved response capabilities may become available to private security forces in the future. In that case, potential increases to the DBTs may be ''reasonable to expect a private force to protect against'' without coming into conflict with ''enemy of the state.'' In summary:

- NRC position: Disagrees with the comments.
- Action: No action required.

3. Compliance With Administrative Procedure Act (APA) Notice and Comment Requirements

Public Comment: Multiple commenters stated that sharing the ACDs with an exclusive group of parties constitutes a violation of the APA because the technical basis for the proposed rule is contained in those documents. Those commenters stated that the NRC should disclose the general and legal principles discussed in the exchange of the documents without releasing Safeguards Information. Another commenter expressed concern that the DBT rule is based on ex parte communications received from the nuclear industry after sharing the contents of the proposed rule only with certain parties. Also, because the general public has no idea what general legal or technical principles were discussed in these private communications, it could not intelligently comment on the proposed rule.

Other commenters charged that the DBT rulemaking is simply codifying secret orders to avoid public scrutiny. Thus, they suggest that because the proposed rule did not contain specifics of the DBTs, the NRC is free to change the specific requirements without notice to the public, effectively conducting a secret rulemaking in violation of the APA.

Industry commenters suggested that the ACDs and RGs should be incorporated by reference into the DBT rule to ensure adequate stakeholder participation in changes to the specific details of the DBTs. Otherwise, these commenters argue that the use of the ACDs and RGs has the potential for circumventing the APA and Paperwork Reduction Act.

Response to Public Comment: The Commission is confident that the rulemaking process for the DBT rule complies with the APA. As set forth in the statements of consideration to the proposed rule (70 FR 67380, 67382; November 7, 2005), the Commission has carefully balanced the public interest in knowing the security considerations for the protection of special nuclear material and the need for meaningful comment with security interests related to the disclosure of specific details of DBT adversaries. The result is a DBT rule that defines in reasonable detail a range of attacks against which licensees are required to defend. The DBT rule contains all of the requirements with which licensees must legally comply. No additional information was necessary to understand or to comment on the proposed DBT rule.

The ACDs and RGs are guidance documents containing SGI and classified information, and describe how licensees can comply with the regulations. The ACDs and RGs are not regulations, and are not legally enforceable. The APA permits agencies to develop guidance documents like the ACDs and RGs without following notice-and-comment rulemaking requirements (5 U.S.C. 553(b)(3)(A)). Changing the guidance in the ACDs or RGs based on changes to the threat environment would not change the requirements of the rule.

The text of the proposed rule provided ample information to enable meaningful comment on what the current level of protection for nuclear power plants and Category I fuel cycle facilities should entail. Members of the public can and have provided the Commission their views in this rulemaking on the number of attackers, amounts of explosives, and types of weapons that licensees should be required to defend against, even without having access to classified information or SGI. Therefore, access to the ACDs and the RGs was not necessary to enable meaningful public comment on the proposed DBT rule.

One commenter suggested that it was improper for the Commission to share the draft ACDs and RGs with members of the nuclear industry but not members of the general public. The NRC shared the draft ACDs and RGs with licensees at the request of NEI before expiration of the initial comment period because NEI, in its capacity as the representative of the nuclear industry, had the appropriate clearance and a specific need to know the information in order to assist licensees in planning and designing protective strategies capable of defending against the DBTs. The NRC also shared those documents with the States of New Jersey and Illinois that had established a need to know and obtained appropriate clearance. Other NRC stakeholders do not necessarily share this need to know, and therefore, have not been granted access to the classified and SGI ACDs and RGs.

The NRC did not provide the draft ACDs and RGs to enable industry comments on the rule, nor has the Commission received or considered non-public comments on the rule. The Commission reiterates that no SGI or classified information was necessary to enable public comment, nor were any non-public comments received or considered over the course of this rulemaking. All of the comments received and considered in this rulemaking have been made publicly available.

Finally, the Commission disagrees that the ACDs and RGs should be incorporated by reference in the text of the final rule. As explained above, the ACDs and RGs are guidance documents. The legally-binding requirements are contained in the text of the rule. Incorporating these documents by reference would not only be inconsistent with that approach, but would potentially subject these documents to public disclosure based on the requirements of Section 552 of the APA, and the Office of the Federal Register regulations. In summary:

- NRC position: Disagrees with the comments.
- Action: No action required.

4. Ambiguous Rule Text

Public Comment: Several commenters stated that the continued use of the phrase ''one or more teams'' in the rule ignores the inherent ambiguity of this type of construction, as identified in the Atomic Safety and Licensing Board's 2005 decision in the Catawba licensing proceedings. See Duke Energy Corporation (Catawba Nuclear Station, Units 1 and 2), LBP–05–10, 61 NRC 241, 297 (2005). The commenters argued that this construction i.e. use of the conjunction ''or'') permits licensees to select from one of two options (i.e. either one team or more teams), and thus permits licensees to develop their protective strategy ignoring the

possibility of three teams or more. The commenters therefore suggested that the rule be revised to eliminate use of this ambiguous construction. One commenter suggested rule text that read ''capable of operating in multiple teams, up to the maximum number of teams that can be formed from the adversary force, where a team has no fewer than two members.''

Response to Public Comment: Though the Commission does not necessarily agree that the phrase ''capable of operating as one or more teams'' is ambiguous, in the final rule, it has nevertheless modified this language to be clear that licensees are required to defend against multiple modes of attack, including both a single group as well as multiple groups. Notably, the prior radiological sabotage DBT rule did not contain language requiring licensees to defend against multiple groups of adversaries, as specified in the theft or diversion DBT. The final rule adds a requirement to the radiological sabotage DBT that licensees protect against an adversary ''capable of operating in each of the following modes: a single group attacking through one entry point, multiple groups attacking through multiple entry points, a combination of one or more groups and one or more individuals attacking through multiple entry points, or individuals attacking through separate entry points,'' and the theft or diversion DBT has been revised for consistency. The rule therefore requires that licensees evaluate a wide range of possible attack scenarios when developing their protective strategies. Under the final rule, licensees must be able to defend against an attack from multiple entry points by a number of groups and/or individuals. Neither a protective strategy that is only capable of defending against a single group nor one that is only capable of defending against a number of smaller groups would meet the requirements of the rule. The revision of this language does not, however, change the scope of this provision as originally intended by the Commission in the proposed rule. The purpose of the change is merely to provide the clearest possible articulation of the rule's requirements. In summary:

- NRC position: Disagrees with the comments.
- Action: No action required.

5. Differentiation in Treatment of General and Specific Licenses for ISFSI

Public Comment: One commenter stated that the NRC did not provide a specific rationale in the proposed rule as to why a specific license ISFSI with security requirements arising from the security requirements in 10 CFR 72.182 should be subject to a different DBT than a general license ISFSI with security requirements arising from 10 CFR 72.212, especially when nearly identical spent fuel in identical storage casks is stored at these two classes of licensees. The commenter requested that the NRC describe why these two types of ISFSIs should be treated differently from a DBT perspective in the final rule, or indicate that these licensees are subject to the same security requirements.

Response to Public Comment: The commenter is correct in noting that specifically-licensed and generally-licensed ISFSIs are treated differently in the current regulations. For example, the current regulation in 10 CFR 73.1(a) contains an exemption for specifically-licensed ISFSIs, subject to 10 CFR 72.182. However, the physical protection regulations for specifically-licensed ISFSIs, found at 10 CFR 72.180 and 72.182, do not require protection against the DBT, so it is unnecessary to exempt specifically-licensed ISFSIs from the DBT regulation. By contrast, generally-licensed ISFSIs are required to protect against the DBT for radiological sabotage by 10 CFR 72.212(b)(5), but by the same regulation, are excepted from certain specific requirements contained in the DBT. Ultimately, these discrepancies have no effect on the security of the facilities because both generally-licensed and specifically-licensed ISFSIs have equivalent protective measures in place, including those imposed by the October 2002 Order. The intent of this rulemaking was to update the DBTs applicable to power reactors and Category I fuel cycle facilities. Conforming changes were made to preserve the existing regulatory structure for other licensees. However, the NRC is currently considering future rulemakings to align the generally-licensed and specifically-licensed ISFSI requirements and to evaluate the application of the DBT. In summary:

- NRC position: Agrees with the comments.
- Action: No action required as part of this rulemaking.

6. Applicability of the Radiological Sabotage DBT to New Nuclear Power Plants

Public Comments: Two commenters stated that the DBT for new nuclear power plants should be the same as for operating nuclear power plants. One commenter specifically stated that the proposed rule did not justify the adoption of different DBTs for new nuclear power plants. The commenter believes that the NRC has already set the DBTs at the level of the largest threat against which a private guard force can reasonably be expected to defend. Therefore, there is no reason to have a different set of DBTs for new nuclear power plants. The commenter expressed a concern that different DBTs for new plants could result in two different sets of DBTs for the same nuclear power plant site with a currently operating nuclear power plant.

Response to Public Comment: The NRC agrees with the commenters that the radiological sabotage DBT should be uniformly applicable to new and currently operating nuclear power plants. In fact, the NRC did not propose different radiological sabotage DBTs for new nuclear power plants in the proposed rule. As stated by the Commission in the staff requirements memorandum on SECY–05–120, ''Security Design Expectations for New Reactor Licensing Activities,'' the expectation is that new reactors will be designed and constructed to be inherently more secure with less reliance on other elements of a traditional security program. To assess the security of new reactors, the NRC is developing proposed requirements for new reactor licensees to submit security assessments as part of their license application package. In summary:

- NRC position: Agrees with the comments.
- Action: No action required as part of this rulemaking.

7. Consideration of the Uniqueness of Each Facility in Application of the DBTs

Public Comment: One commenter stated that each nuclear facility is unique due to its location and surrounding population, and therefore, the DBT for each facility must have its own specific requirements. The DBT cannot be a one-size fits all program.

Response to Public Comment: The DBT rule specifies threat characteristics, and does not specify or include requirements for any specific programs. Site-specific security requirements are embodied in site security plans and security measures. The NRC does not agree with the statement submitted by the commenter that each facility must have its own specific requirements. Site-specific requirements are taken into account by licensees during development of their physical security plans. The NRC considers the site-specific requirements when it reviews and approves the plans, and tests the adequacy of the site-specific requirements when it conducts FOF exercises at nuclear power plants.

It should be noted that the DBTs are comprised of attributes selected from

the overall threat environment. The technical bases for the DBTs are based on the NRC's periodic threat assessments performed in conjunction with the Federal intelligence and law enforcement communities for identification of changes in the threat environment. The assessments contain classified and SGI that cannot be publicly disclosed. The NRC believes that the DBTs should be uniformly applicable to all comparable nuclear facilities and will continue to ensure adequate protection of public health and safety and the common defense and security by requiring the secure use and management of radioactive materials. In summary:

- NRC position: Disagrees with the comments.
- Action: No action required.

8. Continued Exemption of Research and Test Reactors From the DBT Requirements

Public Comment: Two commenters stated that research reactors possessing Category I quantities of highly-enriched uranium (HEU) must provide protection against theft at the same level as any other Category I facility.

Response to Public Comment: The NRC disagrees with this comment. The NRC has made a policy decision that Research and Test Reactors (RTRs) who possess Category I quantities of Special Nuclear Material protect this material as specified in the physical protection requirements for non-power reactor fuel in 10 CFR 73.60(a) through (e) and 73.67. These regulations do not require licensees to protect against either the radiological sabotage or the theft or diversion DBT. Under 10 CFR 73.60, non-power reactor licensees who possess or use 5 kilograms or greater of HEU are exempt from the requirements in 10 CFR 73.60(a) through (e) if the HEU is not readily separable and has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding.

It should also be noted that most RTRs possess limited quantities of nuclear material on-site, and that the nature and form of this material is not easily dispersed or handled. As a result, the NRC has determined that RTRs pose a relatively low risk to public health and safety from potential radiation exposure and has tailored the security requirements and oversight for these facilities consistent with their relatively low risk.

The NRC requires that RTR licensees have security plans and/or procedures that reflect a graded approach which considers the attractiveness of the reactor fuel as a target, and the risk of radiological release. RTR security programs and systems provide for detection and response to unauthorized activities. In general, these programs include access control to the facilities, observation of activities within the facilities, and alarms or other devices to detect unauthorized presence. RTRs also have emergency plans in place to respond to emergency situations.

Those RTRs that are still licensed to use HEU are either already scheduled to convert to low-enriched uranium (LEU) or intend to do so. The DOE is the lead agency for converting RTRs to LEU fuel. The NRC has been working with the DOE to facilitate this effort. In summary:

- NRC Position: Disagrees with the comment.
- Action: No action required.

9. Changes In NRC Security Requirements To Be Addressed Under the Backfit Rule

Public Comment: One commentator stated that the Backfit Rule requires that the NRC perform a backfit analysis for changes in regulatory position. The commenter observed that the NRC has determined that a backfit analysis is not necessary in connection with the changes to the DBTs because the changes result from redefining the level of protection that should be regarded as adequate, but that such a determination should be supported by a documented evaluation and the proposed rulemaking does not provide such an evaluation, and each future change to the ACDs and RGs will require a separate backfit analysis.

Response to Public Comment: The Commission disagrees with the comment that the proposed rulemaking does not provide a documented evaluation of its decision. As stated in the **Federal Register** (70 FR 67387; November 7, 2005), the NRC has determined, pursuant to the exception in 10 CFR 50.109(a)(4)(iii) and 10 CFR 70.76(a)(4)(iv), that a backfit analysis is unnecessary for this rule. Sections 50.109 and 70.76(a)(4)(iv) state, in pertinent part, that a backfit analysis is not required if the Commission finds and declares with appropriate documented evaluation for its finding that a ''regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.'' When the Commission imposed security enhancements by order in April 2003, it did so in response to an escalated domestic threat level. Since that time, the Commission has continued to monitor intelligence reports regarding plausible threats from terrorists currently threatening the U.S. The Commission has also gained experience from implementing the order requirements and reviewing revised licensee security plans. The Commission has considered all of this information and finds that the security requirements similar to those previously imposed by the April 29, 2003 Orders, which applied only to existing licensees, should be made generically applicable. The Commission further finds that the rule redefines the security requirements stated in existing NRC regulations, and is necessary to ensure that the public health and safety and common defense and security are adequately protected in the current, post-September 11, 2001, environment.

The Commission concurs with the commenter's position that documented evaluation should be performed when there are changes in ACDs and RGs necessitated by changes in the threat environment. In summary:

- NRC position: Disagrees with first element of the comment. Concurs with the second element of the comment.
- Action: No current action is required. Future changes in the ACDs and RGs will require a documented evaluation.

10. Compliance With the Paperwork Reduction Act

Public Comment: Several commenters stated that the Paperwork Reduction Act is circumvented by this approach. The commenters assert that the proposed approach using RGs and ACDs to establish the details of the DBTs has the potential for circumventing the Paperwork Reduction Act, and avoiding proper regulatory analyses and backfit analyses. The rule provides broad requirements that lack details and provides the NRC with significant flexibility to change the details of the DBTs, which drives the design of protective measures and protective strategies without appropriate input from the affected regulated licensees.

The Paperwork Reduction Act Statement in the proposed rule (70 FR 67380; November 7, 2005) states that: ''This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995.'' The commenter believes that this statement is incorrect and underestimates the impact on licensees due to future changes to the RGs and ACDs. The Paperwork Reduction Act Statement is flawed and should be revised.

Response to Public Comment: The DBT rule specifies threat characteristics used by licensees to design their

protective strategies. The rule does not contain prescriptive measures to be adopted by individual licensees. The ACDs and RGs include certain details and guidance related to such threat characteristics. This approach has been adopted because the ACDs and RGs contain SGI or classified information that cannot be disclosed in the public domain and would be useful to potential adversaries. This approach is not a circumvention of the Paperwork Reduction Act, but reflects the inherent dichotomy of the DBT rulemaking in trying to reach a balance between the needs for meaningful public participation and the requirement to protect SGI and classified information, where public disclosure of specific attributes or details of security designs or protective measures would have the potential of making them ineffective.

The statement, ''This proposed rule does not contain new or amended information collection * * *. Act of 1995,'' is accurate. The final rule consolidates the supplemental requirements put in place by the orders with the previous DBTs in § 73.1(a), and does not impose additional burden for the current licensees even though the rule contains a cyber threat as an additional attribute of the threat. This is because the licensees subject to the DBTs were directed by the Interim Compensatory Measures (ICM) Order (EA–02–026) to consider and address cyber safety and security vulnerabilities. In April 2003, the Orders (EA–03–086) and (EA–03–087) that supplemented the DBT, also contained language concerning the cyber threat. Licensees were subsequently provided with a cyber security self-assessment methodology, the results of pilot studies, and a guidance document issued by the NEI to facilitate development of site cyber security programs. The designated licensees have done so accordingly.The burden for future licensees will be covered under 10 CFR Part 52 (3150–0151). In summary:

- NRC Position: Disagrees with the comment.
- Action: No action required.

11. Adequacy of the Regulatory Analysis

Public Comment: A commenter stated that the regulatory analysis is based on an incorrect premise and should be revised. A statement in the Regulatory Analysis states that ''Impacts upon the licensees from this proposed rule would be minimal. Because the adversary characteristics would remain consistent with those promulgated by orders, no technical changes will be required. Licensees may need to update references in their security plan documentation, which could be accomplished without NRC review and in conjunction with future plan updates.'' One commenter believes that this statement is incorrect and underestimates the impact on licensees.

Response to Public Comment: The Commission disagrees with the commenter that the regulatory analysis is based on an incorrect premise and should be revised. The regulatory analysis contained in the proposed rule stated that, ''The proposed regulatory action would not involve imposition of any new requirements, and would not expand the DBTs beyond the requirements in place under NRC regulations and orders.'' Consequently, the DBT amendments would not require existing licensees to make additional changes to their current NRC-approved security plans. This premise was correct then and is correct even now because a cyber threat is explicitly included as an attribute of the final rule. Even though the regulatory action involves the imposition of a cyber threat as an explicit requirement, this does not impose additional burden for the licensees. This is because the licensees subject to the DBTs were directed by the ICM Order (EA–02–026) to consider and address cyber safety and security vulnerabilities. Licensees were subsequently provided with a cyber security self-assessment methodology, the results of pilot studies, and a guidance document issued by the NEI to facilitate development of site cyber security programs. This additional requirement in the final rule does not expand the DBTs beyond the requirements currently in place under existing NRC regulations and orders. Consequently, DBT amendments will not require existing licensees to make additional changes to their current NRC-approved security plans. However, the NRC acknowledges that any future changes to the threat environment may effect the ACDs and RGs, and could possibly effect the licensees' security plans that would require either NRC's approval or official communications noting the changes to the NRC. This may also impose additional burden on the licensees. In those events, the regulatory analysis would be changed accordingly. In summary:

- NRC Position: Disagrees with the comment.
- Action: Regulatory Analysis to be changed when there is change in the threat environment in the future.

12. Compliance With the National Environmental Policy Act (NEPA)

Public Comment: Several commenters stated that the proposed rule fails to satisfy NEPA, and the NRC must prepare an Environmental Impact Statement (EIS) for the proposed rule because this is a major federal action significantly affecting the quality of the human environment. These commenters stated that the action is significant because ''the NRC's limitations on the scope of adversaries against which 'a private security force could reasonably be expected to defend' bears directly on the degree to which public health and the environment will be protected against the impacts of accidents caused by terrorist attacks.'' Further, commenters suggested that the NEPA commenting process would be a better forum to disclose and discuss the policy considerations associated with development of the DBTs.

Response to Public Comment: The Commission disagrees that this rule requires the completion of an EIS, and that the NEPA commenting process would provide a better forum for discussion of sensitive security issues. The NEPA and the Commission's regulations at 10 CFR 51.20(a)(1) only require preparation of an EIS if the proposed action is a major Federal action significantly affecting the quality of the human environment. The NRC prepared an environmental assessment (EA) for the proposed rule (70 FR 67387; November 7, 2005) and found that there would be no significant environmental impact associated with implementation of the proposed rule if adopted; and therefore, concluded that no EIS was necessary. NEPA (40 CFR.1508.8(b)) only requires that the Commission consider the ''reasonably foreseeable'' environmental effects of its actions in determining whether an EIS is necessary. Effects that are remote, speculative, or embody the worst-case outcome of a particular action do not require an EIS.[2] In this instance, the consequences of a terrorist attack cannot be said to be ''an effect'' of this rule, and analyzing the effects of a terrorist attack

[2] The Commission recognizes that its position on the necessity of a terrorism analysis as part of an environmental review for a specific proposed facility has been called into question by a recent decision in the 9th Circuit Court of Appeals *(San Luis Obispo Mothers for Peace* v. *NRC*, 449 F.3d 1016 (9th Cir. 2006)). However, the 9th Circuit's determination that the potential environmental effects of a terrorist attack as a result of the licensing of an Independent Spent Fuel Storage Installation should be considered, does not necessarily lead to the conclusion that such effects should be considered as part of this rulemaking action.

would be speculative at best. NEPA does not require such an inquiry.

The Commission does not agree that the NEPA process would provide a better forum for disclosure and discussion of the DBT rule than this rulemaking action. It is not clear how publishing an EIS for public comment would result in the disclosure of additional information because NEPA does not provide any other mechanism how additional information on a proposed rule could be obtained by commenters; the APA notice and comment process provides ample opportunity to comment and provide pertinent information on the proposed rules. Nor does a request by a member of the public to have access to additional information on a particular agency action mandate that the agency conduct a full EIS. All information necessary for public comment on the proposed rule has been made available and therefore, no greater level of detail contained in the ACDs and RGs need to be discussed in the NEPA comment process. The Commission's public comment process in developing an EIS is not a forum for sensitive security issues. In summary:

- NRC Position: Disagrees with the comment.
- Action: No action required.

13. Issuance of Annual Report Card on Individual Licensees

Public Comment: One commenter stated that the NRC should publish an annual report card assessing specific plant performance to defeat attacks in ongoing ''table top'' and mock ''force-on-force'' exercises.

Response to Public Comment: The NRC partially agrees with the statements submitted by the commenter. Section 651 of the EPAct required that the Commission submit two annual reports to the Congress, one classified and another unclassified, describing the results of the Commission's force-on-force exercises and related corrective actions. The detailed results of security-related drills and exercises are, and will remain, protected as SGI because this information can provide insights to potential adversaries in planning of attacks. The Commission recently submitted the first set of these reports to Congress. The unclassified version of the annual report to the Congress is publicly available, and posted on the NRC's website. Through these reports, the NRC provides information regarding the overall security performance of the commercial nuclear power plants to keep Congress and the public informed of the NRC's efforts to help protect our nation's electric power infrastructure against terrorist attacks. In addition, the NRC recently revised its policy on public availability of security inspection results. Under the revised policy, the existence of inspection findings for a specific site's FOF exercises will be identified in the publicly available cover letter transmitting the inspection results to the licensee. In summary:

- NRC Position: Partially agrees with the comment.
- Action: No action required as part of this rulemaking.

Group III. Out of Scope Comments

Though the following topics and comments are pertinent to the security issues of nuclear facilities, they are not directly relevant to the DBT rulemaking. The DBT rule identifies general threat characteristics, but does not require specific protective strategies and security measures to defend against and thwart attacks. Accordingly, the following comments are deemed outside the scope of this rule. However, relevant information is provided as background material to facilitate a better understanding of the existing security measures in place and planned for the future, and to answer the underlying questions and issues raised in the following public comments.

14. Federalization of Security

Public Comment: Commenters stated that the proposed rule should indicate that the threat of an air attack exceeds the defensive capabilities of a plant's security forces, and that the Federal government should either take over the security of the plant and/or integrate the response from local, State, and Federal government resources.

Response to Public Comment: The Commission disagrees with the comment. Federalization of nuclear power plant security is outside of the scope of the proposed rule. However, the following background information is provided for a clearer understanding of the issues involved and the rationale of the Commission's position.

The issue of a Federal protective security force to provide protection at commercial power reactors was initially studied by the NRC and documented in a report to Congress, ''Security Agency Study,'' (August 1976). The study found that the ''* * * creation of a Federal guard force would not result in a higher degree of guard force effectiveness than can be achieved by the use of private guards, properly trained, qualified, trained and certified by the NRC.'' Shortly after September 11, 2001, this issue was again raised. The NRC continues to support the concept that a private security guard force with special emphasis on performance based training and full accountability is the best approach to securing our nation's commercial nuclear facilities. The security for nuclear facilities should be addressed in the context of the protection of other sensitive infrastructure. Society should allocate its security resources according to the relative risks, and, as a result, the separation of nuclear facilities from all other types of sensitive infrastructure will fragment the analysis inappropriately.

Past legislation proposed that the NRC establish a security force for sensitive nuclear facilities. Current security forces at sensitive nuclear facilities are well-trained, and have high retention rates. This change would bring about a fundamental shift in the responsibility and mission of the NRC, diverting the agency from being an independent regulator of nuclear safety and security to being a provider of nuclear security. This could create command and control issues because it would establish two classes of employees at nuclear sites: licensee staff to ensure the safe operation of the reactors and Federal staff to ensure security. This could lead to conflicts and confusion in emergency situations, that could diminish nuclear safety.

The change would serve to increase the Federal budget needlessly. Presumably, given the enhancement in the security threat against which the guard force would be required to defend, the NRC would be required to hire more guards than currently exists at sensitive nuclear facilities (more than 7,000 new Federal workers, which is more than twice the number of staff now employed by the NRC.) These new workers would have to undergo extensive background checks, be trained and qualified, and be armed and equipped. The training of this force alone would likely overload any Federal law enforcement agency's training capability. Presumably, the NRC would have to assume the responsibility for establishment of new security barriers and communications capabilities at the nuclear facilities that by itself raises complicated issues associated with the interplay of security barriers and safety considerations. The NRC estimates that the additional cost to the Federal government to implement these changes may well be over $1 billion a year.

Supplementing the guard force with Federal forces inside the plant areas raises similar concerns. National Guard forces and local/State law enforcement units have been used successfully at a number of facilities to provide additional security external to the plants

when deemed necessary, circumventing difficult command and control issues. Such an external capability can more easily be ''surged'' when needed. In sum, the Commission does not believe such a change is needed. In the Commission's view, the qualified, trained, and tightly regulated private guard forces at nuclear plants should not be replaced by a new Federal security force. In summary:

- NRC position: Disagrees with the comment.
- Action: No action required.

15. Force-on-Force (FOF) Testing of Security

Public Comment: Several commenters stated that security and FOF exercises must be upgraded in order to demonstrate a high degree of confidence that site security forces are able to repel an assault like the September 11, 2001, attack. In addition, under Section 651(a)(1)(b) of the EPAct, the NRC shall mitigate any potential conflict of interest that could influence the results of a FOF exercise. In some instances, the same contractor had supplied both the security guards as well as the mock terrorists.

Response to Public Comment: The Commission disagrees with the comment. The requirements related to FOF testing are outside the scope of this rule. However, the following is provided as background information pertinent to this comment.

The NRC FOF exercise program is designed to provide a realistic evaluation of the proficiency of licensee security forces against a threat consistent with the supplemented DBTs reflected in the orders issued by the Commission on April 29, 2003. After the attacks of September 11, 2001, the agency has expanded and refined its FOF program to make the exercises more realistic. These changes have significantly increased the level of complexity for each exercise in terms of planning, preparation, and logistical support.

The NRC agrees that a credible, well-trained, and consistent mock adversary force is vital to the NRC's FOF program. Therefore, the NRC has worked with the nuclear industry to develop a composite adversary force (CAF) that is trained to the standards issued by the Commission. The new CAF has been used for all FOF exercises conducted after October 2004 and represents a significant improvement in ability, consistency, and effectiveness over the previous adversary forces. The NRC continues to evaluate the CAF at each exercise using rigorous NRC performance standards.

The CAF is currently managed by a company (Wackenhut) that provides much of the security for U.S. nuclear power plants and is, therefore, well-versed in the security operations of nuclear power plants. The NRC recognizes that there may be a perception of a conflict of interest. The NRC established a clear separation of functions between the CAF and plant security force to ensure an independent, reliable, and credible mock adversary force. In addition, the CAF composition includes security officers that are not employed by Wackenhut and no member of the CAF may participate in an exercise at his or her home site.

It is important to emphasize that the NRC, not the CAF, designs, runs, and evaluates the results of the FOF exercises. Because the CAF does not establish the exercise objectives, boundaries, or timelines, and the CAF's performance is subject to continual observation and evaluation by the NRC and its contractors, the agency controls the exercise. If the industry is unable to maintain an adequate and objective CAF that meets the standards mandated by the NRC, the NRC will take the necessary actions to ensure the effectiveness of the force-on-force evaluation program. The NRC is documenting requirements for the performance of FOF testing as well as implementing EPAct requirements for the mitigation of conflict of interest in a separate rulemaking. In summary:

- NRC Position: Disagrees with the comment.
- Action: No action required.

16. Screening of Workers in Nuclear Power Plants

Public Comment: One commenter stated that the NRC must be able to regulate or at least oversee the initial and follow-up screening of temporary and permanent workers who will have access to the reactor vessel, the spent fuel pool, and the related valves, generators, pumps, electrical systems, and miles of piping that are required for the plant's operation and are vulnerable as terrorist targets.

Response to Public Comment: The Commission agrees with the comment to the extent that the NRC does regulate the screening of both permanent and temporary workers with unescorted access to the protected area. The DBT rule does not regulate or oversee specific programs. Instead, it defines the general threat against which licensees must be able to defend against with high assurance. Accordingly, NRC regulation or oversight of screening of workers at nuclear power plants is outside the scope of this rule.

However, it should be noted that the NRC requires licensees to have an access authorization program that meets NRC requirements. 10 CFR 73.56, ''Personnel access authorization requirements for nuclear power plants,'' requires all 10 CFR 50 and 52 licensees to include the required access authorization program as part of their site Physical Security Plan. Specifically, 10 CFR 73.56 states that the licensee is responsible for granting, denying, or revoking unescorted access authorization to any contractor, vendor, or other affected organization employee. Those requirements are intended to ensure that personnel granted unescorted access to vital areas of a nuclear power plant are trustworthy and reliable, and do not constitute an unreasonable risk to the health and safety of the public, including a potential to commit radiological sabotage. In summary:

- NRC Position: Agrees with the comment.
- Action: No action required.

17. Self-Sufficient Defense Capabilities

Public Comment: Two commenters stated that in some regions, notably in large metropolitan areas, communication and transportation modes make it impossible to provide outside help in time to aid in facility defense following a terrorist attack.

Response to Public Comment: The Commission disagrees with the comment. The capabilities of off-site responders are beyond the scope of this rule. However, the following provides an overview of the existing programs and policies in place for addressing issues raised in this comment.

After the September 11, 2001 attacks, the NRC has worked with licensees, the DHS, and State and local governments to improve the capabilities of first responders as part of the National Infrastructure Protection Plan. Part of this program includes conducting Comprehensive Reviews of commercial nuclear site security. The Comprehensive Review, led by the DHS, is a Government and private sector analysis of critical infrastructure facilities to determine the facilities' exposure to potential terrorist attack, the consequences of such an attack, and the integrated prevention and response capabilities of the owner/operator, local law enforcement, and emergency response organizations.

The results are used to enhance the security posture of the facilities and community first responders by using short-term improvements in equipment, training, and processes; and informing longer-term risk-based investments and

science and technology decisions. In less than a year, Comprehensive Reviews have resulted in identifying readily adaptable, low-cost protective measures for increased readiness and preparedness in the event of a terrorist attack or natural disaster. The nuclear sector was the first of the sectors to participate in these reviews. A number of Federal agencies participated in various assessments involving these facilities. Although recognizing that nuclear plants are the best-protected assets of our critical infrastructure, those Federal agencies and the nuclear industry also recognized the value of a unified, collaborative effort to enhance the protection of these vital assets. In summary:

- NRC Position: Disagrees with the comment.
- Action: No action required.

18. Security of Dry Cask Storage

Public Comment: Multiple commenters expressed concerns regarding vulnerabilities of dry cask storage at nuclear power plants under terrorist attacks. The commenters suggested that dry cask storage should be protected by:

(i) Separation with a minimum spacing of 50 yards between each cask,

(ii) Hardening with beamhenge, and/or

(iii) Burial in earthen mounds.

One commenter stated that the NRC must require berming of dry storage casks as part of the DBT.

Response to Public Comment: The Commission disagrees with the commenters' statements. In addition, requirements related to the security of dry cask storage are beyond the scope of this rulemaking. However, design basis and vulnerabilities assessment of dry cask storage facilities are provided below as background information for better understanding of existing requirements.

Dry cask storage facilities (e.g., independent spent fuel storage installations (ISFSIs)) at nuclear power plants are designed to protect against external events such as tornados, hurricanes, fires, floods, and earthquakes. The standards in 10 CFR Part 72 Subpart E, ''Siting Evaluation Factors,'' and Subpart F, ''General Design Criteria,'' ensure that the dry cask storage designs are very rugged and robust. The casks must maintain structural, thermal, shielding, criticality, and confinement integrity during a variety of postulated external events including cask drops, tip-over, and wind driven missile impacts.

After the terrorist attacks of September 11, 2001, the Commission initiated a program in 2002 to assess the capability of nuclear facilities to withstand terrorist attacks. As part of the program, the Commission analyzed the performance of ISFSIs under aircraft attacks and has evaluated the results of detailed security assessments involving large commercial aircraft attacks, which were performed on four representative spent fuel casks. The large aircraft impact studies included structural analyses of the aircraft impact into a single cask and the resulting cask-to-cask interactions. Those evaluations indicate that it is highly unlikely that a significant release of radioactivity would occur from an aircraft impact on a dry spent fuel storage cask.

The Commission is finalizing the security assessments for a number of representative spent fuel storage casks for additional types of attacks and weaponry (including ground attacks), and will continue to evaluate the results of the ongoing assessments. Based upon these results and any other new information, the Commission will evaluate whether any change to its spent fuel storage policy is warranted. The Commission issued a security order for ISFSIs in October 2002, and required the licensees to implement additional enhancement measures for dry cask storage. These enhancements to security included increased vehicle standoff distances, additional security posts, and improved coordination with law enforcement and intelligence communities, as well as strengthened safety-related mitigation procedures and strategies. In summary:

- NRC Position: Disagrees with the comment.
- Action: No action required.

19. Security of Spent Fuel Pools

Public Comment: Four commenters expressed concerns regarding vulnerabilities of spent fuel storage pools at nuclear power reactors under terrorist attacks. The comments referenced the summary of the study performed by the National Academy of Science (NAS) which indicated that a terrorist attack on spent fuel pools is a credible threat and may lead to a release of a large amount of radioactive materials to the environment if it were successful. One comment specifically stated that not only is the NRC's response to the findings of the NAS study slow, but also, that the NRC has no intention of addressing these risk issues. It further stated that the apparent absence of a concerted spent fuel security program in the revised DBT is further evidence of the NRC's failure to recognize and address the problem.

Response to Public Comment: Security program requirements are the subject of another rulemaking, namely 10 CFR 73.55. Accordingly, the need for a concerted spent fuel security program in the revised DBT is beyond the scope of this rule. In addition, the Commission disagrees with the statements submitted by the commenters. The following is provided as background information pertinent to these comments.

The NRC has taken numerous actions to enhance the security of spent nuclear fuel, and will take appropriate additional action as necessary as a result of on-going evaluations. Before September 11, 2001, spent fuel was well protected by physical barriers, armed guards, intrusion detection systems, area surveillance systems, access controls, and access authorization requirements for employees working inside the plants. After September 11, 2001, the NRC has enhanced its requirements, and licensees have increased their resources to improve security at nuclear power plants. For example, the NRC's February 25, 2002 Order to power reactor licensees dealt with spent fuel pool cooling capabilities in the event of a terrorist attack. As a result of the supplemented DBT, the security of spent fuel pools has been enhanced at operating power reactors.

The NRC also initiated a program in 2002 to assess the capability of nuclear facilities to withstand a terrorist attack. The early focus of that program was on power reactors, including spent fuel pools. As the results of that program became available, the NRC provided power reactor licensees additional guidance in February 2005 on the implementation of the February 2002 Order regarding spent fuel mitigation measures. The power reactor licensees responded to these additional specific recommendations in May 2005. Mitigating measures that are being or have been established include those specifically recommended in the NAS study regarding fuel distribution and enhanced cooling capabilities.

The NRC is working with industry to conduct additional plant-specific damage assessments for a range of potential attack scenarios. The NRC continues to evaluate spent fuel pool security in FOF exercises, which the NRC conducts at least once every three years at each power reactor site. In summary:

- NRC Position: Disagrees with the comment.
- Action: No action required.

20. Inherent Design Problems That Make Power Reactors Vulnerable

Public Comment: One commenter stated that the present DBTs ignore

vulnerabilities inherent in the design of nuclear facilities. The commenter stated that the NRC has granted exemptions from certain safety regulations (e.g., Appendix R fire protection standards) to many licensees that present obvious and unacceptable vulnerabilities. The commenter stated that the vulnerability of fire-safety related pump rooms at a nuclear power plant under an attack scenario was disregarded. The commenter further related the documentation of concerns of vulnerabilities regarding inherent design problems through numerous petitions and allegations to the NRC.

Response to Public Comment: The Commission disagrees with the commenter's statement that the present DBTs ignore vulnerabilities inherent in the design of nuclear facilities. The Commission has high assurance that the designs of currently operating reactors are safe, and provide adequate security protection. Moreover, the notion of ''inherent design vulnerabilities'' of nuclear facilities is beyond the scope of this rule, since the DBTs do not specify specific protective measures, such as design features. However, plant specific vulnerabilities are considered during the process of target set development and are utilized during force-on-force testing to assure the licensee is capable of defending the plant. In addition, the NRC is undertaking several separate rulemakings related to this issue. For instance, the Commission has proposed a rule that would amend its regulations related to security requirements for power reactors (71 FR 62664; October 26, 2006). Also, the Commission is considering issuing a proposed rule that would require applicants to assess specific design features that would be incorporated into the final design to support overall security effectiveness of nuclear power plants.

With respect to the commenter's statement on the exemptions from certain safety regulations (e.g., Appendix R fire protection standards), the NRC staff believes that the comment is out of scope of this rulemaking. However, a response to the issue raised in this question is in order. To that end, the following information is provided as background information.

Plants licensed to operate before January 1, 1979, must comply with fire protection requirements as specified in 10 CFR 50.48(b) that backfit paragraphs III.G, J and O of Appendix R. Plants licensed to operate after January 1, 1979, must comply with the approved fire protection program incorporated into their operating license. When the Commission promulgated 10 CFR Part 50, Appendix R, the Commission recognized that there would be plant specific conditions and configurations where strict compliance with the prescriptive features specified in Appendix R would not significantly enhance the level of fire safety already provided by the licensee. Therefore, in certain cases, where the licensee could demonstrate an equivalent level of fire safety that satisfied the underlying purpose of the rule, the licensee could apply for a specific exemption from Appendix R. Thus, the exemption process allowed through 10 CFR 50.12 provides a means of allowing licensees to meet Appendix R through alternate means.

The NRC has granted and continues to grant exemptions when a licensee meets the criteria of 10 CFR 50.12 and demonstrates that the alternate means provide an adequate level of fire safety. The NRC believes that individual fire protection exemptions have had a small impact on plant risk.

Regarding the commenter's statement concerning the petitions and allegations documented and submitted to the NRC, the NRC is currently preparing responses to those that have been received.

- NRC Position: Disagrees with the comment that the present DBTs ignore vulnerabilities inherent in the design of nuclear facilities.
- Action: No action is required with respect to this DBT rulemaking. However, the NRC will provide proper responses to the petitions and allegations that have been received.

III. Summary of Specific Changes Made to the Proposed Rule as a Result of Public Comment

One change is being made to the rule to add a cyber threat as an explicit element of the DBT rule for both external and internal adversaries.

The previous DBT requirements in 10 CFR 73.1 did not specifically include the threat of a cyber attack. However, a cyber attack capability was implied in the proposed 10 CFR 73.1 issued for public comment in the **Federal Register** on November 7, 2005 (70 FR 67380). Under Section 651(a)(2) of the EPAct of 2005, Congress also directed NRC to consider making an ''assessment of physical, cyber, biochemical, and other terrorist threats'' when developing the revised rule, and the NRC specifically asked for public comment on whether this and a number of other aspects should be included in the DBT. One commenter specifically referred to the need for the DBT rule to contain requirements pertaining to cyber attack capabilities.

The NRC has historically required licensees to evaluate cyber vulnerabilities. In February 2002, licensees subject to the DBTs were directed by ICM Order (EA–02–026) to consider and address cyber safety and security vulnerabilities. In April 2003, NRC Orders (EA–03–086 and EA–03–087) that supplemented the DBTs contained language concerning the threat of a cyber attack. Licensees were subsequently provided with a cyber security self-assessment methodology and the results of pilot studies, as well as additional guidance issued by the nuclear industry, to facilitate development of site cyber security programs.

The February 2003, U.S. National Strategy to Secure Cyberspace suggests that the cyber threat likely will increase both in capability and frequency in the future. In light of this threat, the cyber security programs already initiated by the industry, the proposed draft 10 CFR 73.55(m), ''Digital Computer and Communication Networks,'' that is included in the proposed rule on power reactor security requirements (71 FR 62664; October 26, 2006), and the requirements of the EPAct of 2005, the Commission has decided to include a cyber attack as an element of the DBT.

IV. Section-by-Section Analysis

The following provides a comparison between the previous rule text and the final rule text in 10 CFR 73.1.

(a) Previous Rule: Purpose. This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft of special nuclear material. Licensees subject to the provisions of §§ 72.182, 72.212, 73.20, 73.50, and 73.60 are exempt from 73.1(a)(1)(i)(E) and 73.1(a)(1)(iii).

(a) Final Rule: Purpose. This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the

theft or diversion of special nuclear material. Licensees subject to the provisions of § 73.20 (except for fuel cycle licensees authorized under part 70 of this chapter to receive, acquire, possess, transfer, use, or deliver for transportation formula quantities of strategic special nuclear material), §§ 73.50, and 73.60, are exempt from §§ 73.1(a)(1)(i)(E), 73.1(a)(1)(iii), 73.1(a)(1)(iv), 73.1(a)(2)(iii), 73.1(a)(2)(iv). Licensees subject to the provisions of § 72.212 are exempt from § 73.1(a)(1)(iv).

(a) Change: The paragraph is modified to clarify that the DBT is designed to protect against diversion in addition to theft of special nuclear material. The exemptions are updated based on the order requirements and conforming changes to other paragraphs of this part.

(1)(i) Previous Rule: Radiological sabotage. (i) A determined violent external assault, attack by stealth, or deceptive actions, of several persons with the following attributes, assistance and equipment:

(1)(i) Final Rule: Radiological sabotage. (i) A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions, by an adversary force capable of operating in each of the following modes: a single group attacking through one entry point, multiple groups attacking through multiple entry points, a combination of one or more groups and one or more individuals attacking through multiple entry points, or individuals attacking through separate entry points, with the following attributes, assistance and equipment:

(1)(i) Change: The paragraph adds new capabilities to the DBT including operation in multiple modes of attack. The language in the final rule was modified to provide specificity that licensees are required to maintain the capability to protect against several modes, and that a physical security plan only capable of defending against one of the prescribed modes would not satisfy the requirements of the rule.

(1)(i)(A) Previous Rule: Well-trained (including military training and skills) and dedicated individuals,

(1)(i)(A) Final Rule: Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack,

(1)(i)(A) Change: The paragraph adds adversaries who are willing to kill or be killed and are knowledgeable about specific target selection to the DBT.

(1)(i)(B) Previous Rule: Inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both,

(1)(i)(B) Final Rule: Active (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (e.g., provide information), or both, knowledgeable inside assistance,

(1)(i)(B) Change: The reference to an individual is removed and the paragraph reworded to provide flexibility in defining the scope of the inside threat.

(1)(i)(C) Previous Rule: Suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy,

(1)(i)(C) Final Rule: Suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long range accuracy,

(1)(i)(C) Change: The phrase ''up to and including'' is changed to ''including'' to provide flexibility in defining the range of weapons licensees must be able to defend against.

(1)(i)(D) Previous Rule: Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system, and

(1)(i)(D) Final Rule: Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system, and

(1)(i)(D) Change: This description is not revised by the final rule.

(1)(i)(E) Previous Rule: A four-wheel drive land vehicle used for transporting personnel and their hand-carried equipment to the proximity of vital areas, and

(1)(i)(E) Final Rule: Land and water vehicles, which could be used for transporting personnel and their hand-carried equipment to the proximity of vital areas, and

(1)(i)(E) Change: The scope of vehicles licensees must defend against is expanded to include water vehicles and a range of land vehicles beyond four-wheel drive vehicles.

(1)(ii) Previous Rule: An internal threat of an insider, including an employee (in any position), and

(1)(ii) Final Rule: An internal threat, and

(1)(ii) Change: The current rule describes the internal threat as a threat posed by an individual. The language is revised to provide flexibility in defining the scope of the internal threat.

(1)(iii) Previous Rule: A four-wheel drive land vehicle bomb.

(1)(iii) Final Rule: A land vehicle bomb assault, which may be coordinated with an external assault, and

(1)(iii) Change: The paragraph is updated to reflect that licensees are required to protect against a wide range of land vehicles. A new mode of attack not previously part of the DBT regulations is added indicating that adversaries may coordinate a vehicle bomb assault with another external assault.

(1)(iv) Previous Rule: None.

(1)(iv) Final Rule: A waterborne vehicle bomb assault, which may be coordinated with an external assault, and

(1)(iv) Change: The paragraph adds a new mode of attack not previously part of the DBT, that being a waterborne vehicle bomb assault. This paragraph also adds a coordinated attack concept.

(1)(v) Previous Rule: None.

(1)(v) Final Rule: A cyber attack.

(1)(v) Change: Adds a cyber attack. The capability to exploit site computer and communications system vulnerabilities to modify or destroy data and programming code, deny access to systems, and prevent the operation of the computer system and the equipment it controls.

(2)(i) Previous Rule: Theft or diversion of formula quantities of strategic special nuclear material. (i) A determined, violent, external assault, attack by stealth, or deceptive actions by a small group with the following attributes, assistance, and equipment:

(2)(i) Final Rule: Theft or diversion of formula quantities of strategic special nuclear material. (i) A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions, by an adversary force capable of operating in each of the following modes: a single group attacking through one entry point, multiple groups attacking through multiple entry points, a combination of one or more groups and one or more individuals attacking through multiple entry points, or individuals attacking through separate entry points, with the following attributes, assistance and equipment:

(2)(i) Change: The paragraph adds new adversary capabilities to the DBT including operation in multiple modes of attack. The language in the final rule was modified to provide specificity that

licensees are required to maintain the capability to protect against several modes, and that a physical security plan only capable of defending against one of the prescribed modes would not satisfy the requirements of the rule.

(2)(i)(A) Previous Rule: Well-trained (including military training and skills) and dedicated individuals;

(2)(i)(A) Final Rule: Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack;

(2)(i)(A) Change: The paragraph adds to the DBT adversaries who are willing to kill or be killed and are knowledgeable about specific target selection.

(2)(i)(B) Previous Rule: Inside assistance that may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both;

(2)(i)(B) Final Rule: Active (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (e.g., provide information), or both, knowledgeable inside assistance;

(2)(i)(B) Change: The reference to an individual is removed and the paragraph reworded to provide flexibility in defining the scope of the inside threat.

(2)(i)(C) Previous Rule: Suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;

(2)(i)(C) Final Rule: Suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;

(2)(i)(C) Change: The phrase ''up to and including'' is changed to ''including'' to provide flexibility in defining the range of weapons licensees must be able to defend against.

(2)(i)(D) Previous Rule: Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system;

(2)(i)(D) Final Rule: Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system; and

(2)(i)(D) Change: This description is not revised by the final rule.

(2)(i)(E) Previous Rule: Land vehicles used for transporting personnel and their hand-carried equipment; and

(2)(i)(E) Final Rule: Land and water vehicles, which could be used for transporting personnel and their hand-carried equipment.

(2)(i)(E) Change: The scope of vehicles licensees must defend against is expanded to include water vehicles and a range of land vehicles beyond four-wheel drive vehicles.

(2)(i)(F) Previous Rule: The ability to operate as two or more teams.

(2)(i)(F) Final Rule: Deleted.

(2)(i)(F) Change: This requirement is included in (2)(i).

(2)(ii) Previous Rule:An individual, including an employee (in any position), and

(2)(ii) Final Rule: An internal threat,

(2)(ii) Change: The current rule describes the internal threat as a threat posed by an individual. The language is revised to provide flexibility in defining the scope of the internal threat.

(2)(iii) Previous Rule: A conspiracy between individuals in any position who may have:

(A) Access to and detailed knowledge of nuclear power plants or the facilities referred to in § 73.20(a), or

(B) Items that could facilitate theft of special nuclear material (e.g., small tools, substitute material, false documents, etc.), or both.

(2)(iii) Final Rule: A land vehicle bomb assault, which may be coordinated with an external assault, and

(2)(iii) Change: The paragraph is updated to reflect that licensees are required to protect against a wide range of land vehicles. A new mode of attack not previously part of the DBT is added indicating that adversaries may coordinate a vehicle bomb assault with another external assault.

(2)(iv) Previous Rule: None.

(2)(iv) Final Rule: A waterborne vehicle bomb assault, which may be coordinated with an external assault.

(2)(iv) Change: The paragraph would add a new mode of attack not previously part of the DBT, that being a waterborne vehicle bomb assault. This coordinated attack concept is another upgrade to the current regulation.

(2)(v) Previous Rule: None.

(2)(v) Final Rule: A cyber attack.

(2)(v) Change: Adds a cyber attack. The capability to exploit site computer and communications system vulnerabilities to modify or destroy data and programming code, deny access to systems, and prevent the operation of the computer system and the equipment it controls.

The Commission concludes that the amendments to § 73.1 will continue to ensure adequate protection of public health and safety and the common defense and security by requiring the secure use and management of radioactive materials. The revised DBTs represent the largest threats against which private sector facilities must be able to defend with high assurance. The amendments to 10 CFR 73.1 reflect requirements currently in place under existing NRC regulations and orders.

V. Guidance

The NRC staff is preparing new regulatory guides (RGs) to provide detailed guidance on the revised DBT requirements in 10 CFR 73.1. These guides are intended to assist current licensees in ensuring that their security plans meet requirements in the revised rule, as well as future license applicants in the development of their security programs and plans. The new guidance incorporates the insights gained from applying the earlier guidance that was used to develop, review, and approve the site security plans that licensees put in place in response to the April 2003 Orders. As such, this regulatory guidance is expected to be consistent with revised security measures at current licensees. The publication of the RGs is planned to coincide with the publication of the final rule.

1. Regulatory Guide (RG–5.69) , ''Guidance for the Implementation of the Radiological Sabotage Design-Basis Threat (Safeguards).'' This regulatory guide will provide guidance to the industry on the radiological sabotage DBT. RG–5.69 contains SGI and, therefore, is being withheld from public disclosure and distributed on a need-to-know basis to those who otherwise qualify for access.

2. Regulatory Guide (RG–5.70), ''Guidance for the Implementation of the Theft or Diversion Design-Basis Threat (Classified).'' This regulatory guide will provide guidance to the industry on the theft or diversion DBT. RG–5.70 contains classified information and, therefore, is withheld from public disclosure and distributed only on a need to know basis to those who otherwise qualify for access.

VI. Resolution of Petition (PRM–73–12)

The staff incorporated consideration of a petition for rulemaking into this rulemaking filed by the Committee to Bridge the Gap (PRM–73–12) on July 23, 2004. The petition requests that NRC conduct a rulemaking to revise the DBT regulations (including numbers, teams, capabilities, planning, willingness to die, and other characteristics of

adversaries) to a level that encompasses, with a sufficient margin of safety, the terrorist capabilities demonstrated during the attacks of September 11, 2001. The petition also requests that security plans, systems, inspections, and FOF exercises be revised in accordance with the amended DBTs. Finally, the petition requests that a requirement be added to Part 73 to require licensees to construct shields against air attack (referred to as ''beamhenges'') so that nuclear power plants would be able to withstand an air attack from a jumbo jet similar to the September 11, 2001, attacks.

PRM–73–12 was published for public comment in the **Federal Register** on November 8, 2004 (69 FR 64690). There were 845 comments submitted on PRM–73–12, of which 528 were form letters. The staff reviewed both the petition and the comments on the petition against the supplemental DBTs to determine if the DBTs should be revised as requested by the petitioner. Based on this review, the NRC staff determined that a number of the proposed revisions in PRM–73–12 had already been set forth in the proposed DBT rule language. The NRC partially granted PRM–73–12 as stated in the public notice of the proposed 10 CFR 73.1 DBT rulemaking, (See, 70 FR 67380; November 7, 2005), but deferred action on other aspects of the petition, particularly with respect to its consideration of the airborne threat, to the final rulemaking.

During the course of this rulemaking, the Commission considered if it would be necessary to add some type of airborne threat as part of the DBTs. After careful evaluation and consideration, the Commission has chosen a two-track response to the air threat that excludes physical security measures such as ''beamhenge.'' First, the Commission determined that active protection against the airborne threat requires military weapons and ordinance (i.e., ground-based air defense missiles), that rightfully belong to the Department of Defense. Thus, the airborne threat is one which is beyond what a private security force can reasonably be expected to defend against. Second, licensees have been directed to implement certain mitigative measures to limit the effects of an aircraft strike. Therefore, the Commission has denied the request of the petition PRM–73–12 regarding the inclusion of the airborne threat in the DBTs, as well as beamhenge as physical security measures. More detailed information in support of the Commission's position is provided in the comment resolutions for Factor 6, the potential for water-based and air-based threats, and Factor 9, the potential for fires, especially fires of long duration.

VII. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act, as amended, the Commission is issuing the final rule to revise 10 CFR 73.1 under Sections of 161b, 161i, or 161o of the Atomic Energy Act of 1954 (AEA). Criminal penalties, as they apply to regulations in Part 73, are discussed in 10 CFR 73.81.

VIII. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs, ''approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

IX. Availability of Documents

Some documents discussed in this notice are not available to the public. The following table indicates which documents are available to the public and how they may be obtained. *Public Document Room (PDR).* The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland 20852. *Rulemaking Website (Web).* The NRC's interactive rulemaking Website is located at: *//ruleforum.llnl.gov*. These documents may be viewed and downloaded electronically via this Web site. *NRC's Electronic Reading Room (ERR).* The NRC's electronic reading room is located at *http://www.nrc.gov/reading-rm.html*.

Document	PDR	Web	ERR
Environmental Assessment	X	X	ML070530261
Regulatory Analysis	X	X	ML070530193
Public Comments on PRM–73–12	X	X	ML053040061
Radiological Sabotage Adversary Characteristics document	no	no	no
Theft or diversion Adversary Characteristics document	no	no	no
Technical Basis Document	no	no	no
RG 5.69 on Radiological Sabotage	no	no	no
RG -5.70 on Theft or Diversion	no	no	no
Memorandum: Status of Security-Related Rulemaking	X	X	ML041180532
Commission SRM dated August 23, 2004			ML042360548
Memorandum: Schedule for Part 73 Rulemakings	X	X	ML043060572
Letter to Petitioner	X	X	ML052920150
Commission SRM dated October 27, 2005	X	X	ML053000448
Proposed Rulemaking dated November 7, 2005	X	X	ML060090310
Public Comments on Proposed Rule	X	X	ML062130575
Commission SRM dated January 29, 2007	X	X	ML070290286
Final Rulemaking	X	X	ML070520692

X. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' published on June 10, 1998 (63 FR 31883) directed that the Government's documents be in plain, clear, and accessible language. The NRC requested comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. No specific comments were received on the proposed rule related to this issue.

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is not aware of any voluntary consensus standard that could be used instead of the proposed Government-unique standards. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified.

XII. Finding of No Significant Environmental Impact: Environmental Assessment: Availability

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

The determination of this environmental assessment is that there will be no significant off-site impact to the public from this action.

The NRC sent a copy of the environmental assessment and the proposed rule to every State Liaison Officer and requested their comments on the environmental assessment. No comments were received from the State Liaison Officer on the environmental assessment.

XIII. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements and, therefore is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing information collection requirements were approved by the Office of Management and Budget, approval number 3150–0002. The burden for all future licensees will be covered under 10 CFR Part 52 (3150–0151) as part of the combined operator license applications.

Public Protection Notification

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

XIV. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requested public comment on the draft regulatory analysis. Comments on the draft analysis have been addressed in Section II of this document. Availability of the regulatory analysis is provided in Section VIII of this document.

XV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants and Category I fuel cycle facilities. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XVI. Backfit Analysis

The NRC has determined, pursuant to the exception in 10 CFR 50.109(a)(4)(iii) and 10 CFR 70.76(a)(4)(iv), that a backfit analysis is unnecessary for this final rule. Sections 50.109 and 70.76(a)(4)(iv) state, in pertinent part, that a backfit analysis is not required if the Commission finds and declares with appropriate documented evaluation for its finding that a ''regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.'' The final rule increases the security requirements currently prescribed in NRC regulations, and is necessary to protect nuclear facilities against potential terrorists. When the Commission imposed security enhancements by order in April 2003, it did so in response to an escalated domestic threat level. Since that time, the Commission has continued to monitor intelligence reports regarding plausible threats from terrorists currently facing the U.S. The Commission has also gained experience from implementing the order requirements and reviewing revised licensee security plans. The Commission has considered all of this information and finds that security requirements similar to those previously imposed by the DBT Orders, which applied only to existing licensees, should be made generically applicable. The Commission further finds that the final rule would redefine the security requirements stated in existing NRC regulations, and is necessary to ensure that the public health and safety and common defense and security are adequately protected in the current, post-September 11, 2001 environment.

XVII. Congressional Review Act

Under the Congressional Review Act of 1996, NRC has determined that this action is not a ''major rule'' and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, and Security measures.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 2. In § 73.1, paragraph (a) is revised to read as follows:

§ 73.1 Purpose and scope.

(a) *Purpose*. This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft or diversion of special nuclear material. Licensees subject to the provisions of § 73.20 (except for fuel cycle licensees authorized under Part 70 of this chapter

to receive, acquire, possess, transfer, use, or deliver for transportation formula quantities of strategic special nuclear material), §§ 73.50, and 73.60 are exempt from §§ 73.1(a)(1)(i)(E), 73.1(a)(1)(iii), 73.1(a)(1)(iv), 73.1(a)(2)(iii), and 73.1(a)(2)(iv). Licensees subject to the provisions of § 72.212 are exempt from § 73.1(a)(1)(iv).

(1) *Radiological sabotage.* (i) A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions, by an adversary force capable of operating in each of the following modes: A single group attacking through one entry point, multiple groups attacking through multiple entry points, a combination of one or more groups and one or more individuals attacking through multiple entry points, or individuals attacking through separate entry points, with the following attributes, assistance and equipment:

(A) Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack;

(B) Active (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (e.g., provide information), or both, knowledgeable inside assistance;

(C) Suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long range accuracy;

(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system; and

(E) Land and water vehicles, which could be used for transporting personnel and their hand-carried equipment to the proximity of vital areas; and

(ii) An internal threat; and

(iii) A land vehicle bomb assault, which may be coordinated with an external assault; and

(iv) A waterborne vehicle bomb assault, which may be coordinated with an external assault; and

(v) A cyber attack.

(2) *Theft or diversion of formula quantities of strategic special nuclear material.* (i) A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions, by an adversary force capable of operating in each of the following modes: a single group attacking through one entry point, multiple groups attacking through multiple entry points, a combination of one or more groups and one or individuals attacking through multiple entry points, or individuals attacking through separate entry points, with the following attributes, assistance and equipment:

(A) Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack;

(B) Active (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (e.g., provide information), or both, knowledgeable inside assistance;

(C) Suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;

(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safe-guards system;

(E) Land and water vehicles, which could be used for transporting personnel and their hand-carried equipment; and

(ii) An internal threat; and

(iii) A land vehicle bomb assault, which may be coordinated with an external assault; and

(iv) A waterborne vehicle bomb assault, which may be coordinated with an external assault; and

(v) A cyber attack.

* * * * *

Dated at Rockville, Maryland this 13th day of March 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 07–1317 Filed 3–16–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25085; Directorate Identifier 2006–SW–02–AD; Amendment 39–14996; AD 2007–06–15]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, and AS350D1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires replacing a certain hydraulic drive belt (drive belt). Also required is reducing the lubrication time interval for a certain hydraulic pump drive shaft (drive shaft). This amendment is prompted by in-flight failures of the drive belt and the drive shaft. The actions specified by this AD are intended to prevent in-flight failure of the drive belt or drive shaft, loss of hydraulic power to the flight control system, and subsequent loss of control of the helicopter.

DATES: Effective April 23, 2007.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or at the Docket Management System (DMS), U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on June 30, 2006 (71 FR 37515). That action proposed to require the following:

- At or before the next 500-hour time-in-service (TIS) inspection, replacing the drive belt with an airworthy drive belt that is not included in the applicability of this AD, and
- Within 110 hours TIS or at the next scheduled lubrication interval for the drive shaft splines, and thereafter at intervals not to exceed 110 hours TIS or 6 months, whichever occurs first, lubricating the drive shaft splines.

Eurocopter has issued the following:

- Service Bulletin No. 63.00.08, dated May 27, 2002, which specifies installing a poly-v type drive belt on the driving hydraulic pump; and
- Service Bulletin No. 29.00.04, Revision 1, dated January 27, 2004, which specifies reducing the lubrication

interval and installing an O-ring seal in the groove of the hydraulic pump drive shaft in order to prevent early wear of the splines.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received. The commenter states that the Eurocopter AS350 (BA and B2) Master Servicing Recommendations along with the applicable Service Bulletin(s) and good preventative maintenance practices provide a good level of safety, therefore, he suggests that the requirement to grease the hydraulic pump drive splines every 110 hours be removed from the AD because it is currently mandated by Eurocopter to be accomplished every 100 hours on all models of the AS350 Series helicopter. We do not agree with the recommendation because, depending on the aircraft operation, compliance with the manufacturer's service information may not be required, therefore, in order to mandate corrective action for the unsafe condition, this AD requires all affected aircraft to comply with the greasing interval at intervals not to exceed 110 hours TIS or 6 months, whichever occurs first.

Also, when finalizing this final rule, we discovered that we had omitted the Eurocopter Model AS355E helicopters from the applicability of the proposed AD. Therefore, we may supersede this action in the future to add the additional model helicopter to the applicability.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

We estimate that this AD will affect 700 helicopters of U.S. registry. Replacing each drive belt will take approximately 25 work hours and lubricating the drive shaft splines will take approximately 1 work hour. The average labor rate is $80 an hour. Each replacement drive belt costs about $3,500. Based on these figures, we estimate the total cost impact of this AD on U.S. operators to be $4,130,000, assuming no helicopter has been modified with the new drive shaft belt and that the splines are lubricated 5 times in the first year.

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2007–06–15 Eurocopter France: Amendment 39–14996. Docket No. FAA–2006–25085; Directorate Identifier 2006–SW–02–AD.

Applicability

Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, and AS350D1 helicopters with a hydraulic drive belt (drive belt), part number (P/N) 704A33–690–004, or a hydraulic pump drive shaft (drive shaft), P/N 704A34–310–006, installed, certificated in any category.

Compliance

Required as indicated.

To prevent loss of hydraulic power to the flight control system and subsequent loss of control of the helicopter, accomplish the following:

(a) At or before the next 500-hour time-in-service (TIS) inspection, unless accomplished previously, replace the drive belt with an airworthy drive belt that is not included in the applicability of this AD.

(b) Within 110 hours TIS or at the next scheduled lubrication interval for the drive shaft splines, and thereafter at intervals not to exceed 110 hours TIS or 6 months, whichever occurs first, lubricate the drive shaft splines.

(c) This action reduces the interval for lubricating the drive shaft splines from 550 hours TIS or 2 years, whichever occurs first, to 110 hours TIS or 6 months, whichever occurs first.

Note: Eurocopter Service Bulletin No. 63.00.08, dated May 27, 2002, and No. 29.00.04, Revision 1, dated January 27, 2004, pertain to the subject of this AD.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Directorate, Regulations and Guidance Group, FAA, ATTN: Gary Roach, Aviation Safety Engineer, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(e) This amendment becomes effective on April 23, 2007.

Issued in Fort Worth, Texas, on March 9, 2007.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–4851 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 745

[Docket No. 061101286–7039–02]

RIN 0694–AD85

Revisions to the Export Administration Regulations Based on U.S. Recognition of Montenegro as a Sovereign State; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendment.

SUMMARY: The Bureau of Industry and Security (BIS) published a final rule in the **Federal Register** on Monday, November 27, 2006 (71 FR 68438) that amended the Export Administration Regulations (EAR) to add ''Montenegro'' and ''Serbia'' as separate countries in the EAR and to establish separate export licensing requirements for Montenegro and Serbia. The November 27, 2006, final rule omitted a conforming amendment to the list of States Parties to the Chemical Weapons Convention in the EAR. This document corrects that rule by listing Serbia and Montenegro as separate countries on that list.

DATES: *Effective Date:* This rule is effective March 19, 2007.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov*, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AD85 in all comments, and in the subject line of e-mail comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Steven Emme, Regulatory Policy Division, Bureau of Industry and Security, *Telephone:* (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

This document corrects an inadvertent omission in the final rule that was published by the Bureau of Industry and Security (BIS) on November 27, 2006 (71 FR 68438). The November 27, 2006 final rule did not include a conforming amendment to Supplement No. 2 to part 745 of the EAR to amend the reference to ''Serbia and Montenegro''. This document corrects Supplement No. 2 to part 745 by removing ''Serbia and Montenegro'' and adding ''Montenegro'' and ''Serbia''.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (August 7, 2006), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has previously been approved by OMB under control number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. This rule is not expected to result in any change for collection purposes.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Steven Emme, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, part 745 of the Export Administration Regulations (15 CFR parts 730–799) is corrected by making the following correcting amendment:

PART 745—[AMENDED]

■ 1. The authority citation for 15 CFR part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

■ 2. In Supplement No. 2 to part 745, States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction is amended by removing ''Serbia and Montenegro'' and by adding, in alphabetical order, ''Montenegro'' and ''Serbia''.

Dated: March 9, 2007.

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. 07–1275 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 031001243–6227–02]

RIN 0648–AQ41

Gray's Reef National Marine Sanctuary Regulations; Announcement of Effective Date

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Announcement of Effective Date.

SUMMARY: On October 12, 2006, the National Oceanic and Atmospheric Administration (NOAA) published a final rule (71 FR 60055) issuing a final management plan, revised designation document and final regulations for the Gray's Reef National Marine Sanctuary. Under the National Marine Sanctuaries Act, the final regulations would

automatically take effect at the end of 45 days of continuous session of Congress beginning on October 12, 2006. The 45-day review period ended on February 16, 2007. This document confirms the effective date as February 16, 2007.

DATES: *Effective Date:* The final rule published on October 12, 2006 (71 FR 60055) took effect on February 16, 2007.

FOR FURTHER INFORMATION CONTACT: Becky Shortland, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, Georgia 31411; 912–598–2381; *Becky.Shortland@noaa.gov*.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 13, 2007.

John H. Dunnigan,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 07–1303 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–08–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

Revised Medical Criteria for Determination of Disability, Musculoskeletal System and Related Criteria

CFR Correction

In Title 20 of the Code of Federal Regulations, Parts 400 to 499, revised as of April 1, 2006, on page 948, § 416.933 is corrected by adding a sentence after the second sentence to read as follows:

§ 416.933 How we make a finding of presumptive disability or presumptive blindness.

* * * For other impairments, a finding of disability or blindness must be based on medical evidence or other information that, though not sufficient for a formal determination of disability or blindness, is sufficient for us to find that there is a high degree of probability that you are disabled or blind. * * *

[FR Doc. 07–55503 Filed 3–16–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 1976N–0052G] (formerly Docket No. 76N–052G)

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to change the location of a section in an over-the-counter (OTC) drug monograph. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: This rule is effective March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5496, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION: FDA published the final monograph (FM) for cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products for OTC human use in the **Federal Register** of December 23, 2002 (67 FR 78158). In that FM, FDA inadvertently added § 341.40 (21 CFR 341.40) to subpart C of the monograph, when that section should have been added to subpart B of the monograph. Accordingly, FDA is now moving § 341.40 from subpart C to subpart B of the monograph.

Publication of this document constitutes final action on this change under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedures are unnecessary because FDA is merely implementing a change in the location of a section in an OTC drug monograph. No other changes are being made to that section of the monograph.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

Subpart B—Active Ingredients [Amended]

■ 2. Remove § 341.40 *Permitted combinations of active ingredients* from subpart C and add it to subpart B of part 341.

Dated: March 12, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–4957 Filed 3–16–07; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA83

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is issuing a final rule imposing a special measure against Banco Delta Asia SARL (''Banco Delta Asia'' or ''the bank'') as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act.

DATES: This final rule is effective on April 18, 2007.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required To

Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (''USA PATRIOT Act''). Title III of the USA PATRIOT Act amends the anti-money-laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary of the Treasury (''the Secretary'') to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of FinCEN (''the Director'').[1] The Bank Secrecy Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.[2]

Section 311 of the USA PATRIOT Act added section 5318A to the Bank Secrecy Act, granting the Director the authority, after finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and domestic financial agencies to take certain ''special measures'' against the primary money laundering concern. Section 311 identifies factors for the Director to consider and Federal agencies to consult before we may find that reasonable grounds exist for concluding that a jurisdiction, institution, class of transactions, or type of account is of primary money laundering concern. The statute also provides similar procedures, including factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern.

Taken as a whole, section 311 provides the Director with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options provide the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats and the ability to take steps to protect the U.S. financial system. Through the imposition of various special measures, we can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, institutions, transactions, and accounts; and ultimately protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Director is required by the Bank Secrecy Act to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, when finding that a foreign financial institution is of primary money laundering concern, the Director is required by section 311 to consider ''such information as [we] determine[ ] to be relevant, including the following potentially relevant factors:''

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the Bank Secrecy Act continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If we determine that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, we must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually or jointly, in any combination, and in any sequence.[3] In the imposition of special measures, we follow procedures similar to those for finding a foreign financial institution to be of primary money laundering concern, but we also engage in additional consultations and consider additional factors. Section 311 requires us to consult with other appropriate Federal agencies and parties[4] and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and
- The effect of the action on U.S. national security and foreign policy.[5]

In this final rule, we are imposing the fifth special measure (31 U.S.C. 5318A(b)(5)) against Banco Delta Asia, a commercial bank in Macau, Special Administrative Region, China (''Macau''). The fifth special measure allows for the imposition of conditions upon, or the prohibition of, the opening or maintaining of correspondent or payable-through accounts in the United States for or on behalf of a foreign financial institution of primary money

[1] Therefore, references to the authority of the Secretary of the Treasury under section 311 of the USA PATRIOT Act apply equally to the Director of the Financial Crimes Enforcement Network. Accordingly, authorities granted to the Secretary are attributed to the Director of FinCEN in this rulemaking.

[2] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the USA PATRIOT Act.

[3] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

[4] Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration, and, in our sole discretion, ''such other agencies and interested parties as the Secretary may find to be appropriate.'' The consultation process must also include the Attorney General if the Secretary is considering prohibiting or imposing conditions upon the opening or maintaining of a correspondent account by any domestic financial institution or domestic financial agency for the foreign financial institution of primary money laundering concern. 31 U.S.C. 5318(c)(1).

[5] Classified information used in support of a section 311 finding of primary money laundering concern and imposition of special measure(s) may be submitted by Treasury to a reviewing court *ex parte* and *in camera*. See section 376 of the Intelligence Authorization Act for Fiscal Year 2004, Pub. L. 108–177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

laundering concern. Unlike the other special measures, this special measure may be imposed only through the issuance of a regulation.

B. Banco Delta Asia

Banco Delta Asia, located and licensed in Macau, is the commercial banking arm of its parent company, Delta Asia Group (Holdings) Ltd. (''Delta Asia Group'').[6] In addition to commercial banking, Delta Asia Group engages in investment banking and insurance activities. Banco Delta Asia was originally established in 1935 as Banco Hang Sang,[7] and its name changed to Banco Delta Asia in December 1993. According to Banco Delta Asia's representations to us, the bank had roughly $205 million (U.S. dollars) in assets as of July 2006. Banco Delta Asia operates eight branches in Macau (including a branch at a casino) and is served by a representative office in Japan. According to statements made by Banco Delta Asia, many of its foreign correspondent relationships in North America, Europe, and Asia were terminated after the publication of our finding of primary money laundering concern, and the bank no longer maintains a foreign correspondent account in the United States.[8] Banco Delta Asia may still have indirect access to the U.S. financial system, however, via nested correspondent accounts at other foreign financial institutions that have correspondent accounts at covered financial institutions. Banco Delta Asia has two wholly owned subsidiaries: Delta Asia Credit Limited and Delta Asia Insurance Limited.[9]

II. The 2005 Finding and Subsequent Developments

A. The 2005 Finding

Based upon review and analysis of pertinent information, consultations with relevant Federal agencies and parties, and consideration of the factors enumerated in section 311, in September 2005 the Director found that reasonable grounds existed for concluding that Banco Delta Asia was a financial institution of primary money laundering concern. This finding was published in conjunction with a Notice of Proposed Rulemaking,[10] which proposed prohibiting covered financial institutions from, directly or indirectly, opening or maintaining correspondent accounts in the United States for Banco Delta Asia or any of its branches, offices, or subsidiaries, pursuant to the authority under 31 U.S.C. 5318A.

The Notice of Proposed Rulemaking outlined the various factors supporting the finding and proposed prohibition.[11] Specifically, we stated that Banco Delta Asia had provided financial services for more than 20 years to multiple North Korean-related individuals and entities that were engaged in illicit activities. Sources showed that certain of such entities had paid a fee to Banco Delta Asia for financial access to the banking system with little oversight or control, and that the bank helped conduct surreptitious, multi-million dollar cash deposits and withdrawals on their behalf. In fact, the bank facilitated several multi-million dollar wire transfers connected to alleged criminal activity on behalf of one such company. Banco Delta Asia maintained an uninterrupted banking relationship with one North Korean front company despite the fact that the head of the company was charged with attempting to deposit large sums of counterfeit currency into Banco Delta Asia, for which he was expelled from Macau. Banco Delta Asia also serviced the account of a known international drug trafficker. Treasury's September 2005 Notice also noted that any legitimate business use of Banco Delta Asia appeared to be significantly outweighed by its use to promote or facilitate money laundering and other financial crimes.

Treasury determined that a finding that Banco Delta Asia was of primary money laundering concern and prohibiting covered financial institutions from opening or maintaining correspondent accounts for that institution would prevent suspect accountholders at Banco Delta Asia from accessing the U.S. financial system to facilitate money laundering. It would also bring criminal conduct occurring at or through Banco Delta Asia to the attention of the international financial community and thus serve the purposes of the Bank Secrecy Act as well as guard against international money laundering and other financial crime.

B. Jurisdictional Developments

As Special Administrative Region to the People's Republic of China, Macau retains substantial autonomy in all areas related to the regulation and oversight of its financial services sector and domestic economic affairs. Macau's financial system, including its robust casino and gaming sector, has historically been known to be vulnerable to financial crime,[12] due in large part to an under-developed anti-money laundering regime. As discussed below, however, Macau has begun to take important steps to address those systemic concerns.

While Macau has worked to develop its anti-money laundering and counter-terrorist financing framework since the 1990s, and has joined regional groups such as the Asia Pacific Group on Money Laundering (APG) to aid these efforts, Macanese authorities have taken a number of additional important steps since the September 2005 Notice of Proposed Rulemaking on Banco Delta Asia to address the reported money laundering risks and systemic vulnerabilities.[13] In April 2006, Macau enacted Law no. 2/2006 on Prevention and Repression of the Crime of Money Laundering and Law no. 3/2006 on Prevention and Repression of the Crime of Terrorism. The new law on money laundering replaces and supersedes existing money laundering legislation, Decree-Law 24/98/M, and the provisions on money laundering in Law 6/97/M against organized crime, and makes comprehensive and stand-alone the crime of money laundering. Further, it broadens the scope of predicate offences to all serious crimes,[14] including terrorism, and is extended to conduct occurring outside of Macau. Violations of the anti-money laundering law are punishable with a penalty of imprisonment of not less than three years, ''as well as [forfeiture of] any assets obtained therefrom.''

[6] The Bankers' Almanac (2006). For purposes of this rulemaking, our finding of primary money laundering concern and imposition of special measures shall apply exclusively to Banco Delta Asia and its branches, offices, and subsidiaries, and not to Delta Asia Group (Holdings) Ltd., or any of its other subsidiaries.

[7] Banco Delta Asia's historical name, Banco Hang Sang, is not to be confused with Hang Seng Bank, a Hong Kong bank, nor the Hang Seng Index, an index of certain shares traded on the Hong Kong Stock Exchange.

[8] As of November 2006, Bankers' Almanac indicated that the bank maintained one U.S. correspondent relationship, although it is possible that the self-reported data had not been updated.

[9] The Bankers' Almanac (2006).

[10] See 70 FR 55214 (Finding) (Sept. 20, 2005); 70 FR 55217 (Notice of Proposed Rulemaking) (Sept. 20, 2005).

[11] Id.

[12] See, e.g.: *http://www.fas.org/irp/threat/pub45270index.html* (International Crime Threat Assessment, 2000) *http://archives.cnn.com/1999/ASIANOW/east/macau/stories/macau.north.korea/index.html* (1999); *http://www.asiapacificms.com/articles/north_korea_banking/* (2003); *http://www.gluckman.com/MacauHo.html* (1997); *http://www.asiaweek.com/asiaweek/98/1030/nat7.html* (1999); *http://archives.cnn.com/1999/ASIANOW/east/macau/profiles/edmond.ho/* (1999); *http://www.asianpacificpost.com/portal2/pageView.html?id=402881910674ebab010674f4ca74141f*; etc.

[13] Macao, China, Jurisdiction Report (to Asia Pacific Group Annual Meeting), 2006. PROGRESS REPORT ON THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE APG EVALUATION REPORT, 2006.

[14] ''Serious crimes'' are defined as crimes carrying a punishment of two to eight years imprisonment.

In addition, in May 2006, Macau enacted Administrative Regulation no. 7/2006—Preventive Measures Against Money Laundering and Financing Terrorism—a set of implementing measures related to the new laws which statutorily went into full legal effect on November 12, 2006. The regulation broadens and clarifies the obligations of covered institutions regarding identification of customers and contract parties as well as the nature, purpose, and source of funds and transactions performed; requires recordkeeping and reporting of suspicious and large cash transactions; and obligates institutions to refuse transactions absent adequate information. Further, the regulation provides for fines (between 10,000 and 500,000 patacas [15] for a natural person and between 100,000 and 5,000,000 patacas for a legal person) against those found to be in violation of the anti-money laundering laws. The regulation, applicable to multiple sectors (financial and designated non-financial businesses and professions) now covered under the new provisions, is aimed at combating the financing of terrorism and money laundering and stipulates that the duties established under the new provisions will be applied by the following supervisory and regulatory agencies in relation to the entities subject to their respective supervision: Macao [16] Monetary Authority, Gaming Inspection and Coordination Bureau, Macao Trade and Investment Bureau, Finance Department, Macao Lawyers Association, Independent Commission for the Exercise of the Disciplinary Power over Solicitors, Legal Affairs Bureau, and Macau Economic Department. The new regulation has also specified penalties for non-compliance by covered institutions.

The Office of Financial Intelligence (''GIF'') was established by Order of the Chief Executive no. 227/2006 in August 2006 and began operations on November 12, 2006. As provided in the order, this office will function as Macau's financial intelligence unit (''FIU''), collecting, analyzing and disseminating information on suspicious and large cash transactions and cooperating as necessary with international FIUs. GIF also has the responsibility for reporting suspected money laundering activities to the Public Prosecutions Office and, to the extent capable and necessary, for providing technical assistance to covered institutions and all regulatory bodies subject to the new legislation.

Macanese authorities have created a Money Laundering Related Crime Division (a special investigative agency dedicated to financial crimes) within the Judiciary Police. A separate law governing international mutual legal assistance in criminal matters, Law no. 6/2006 on Judicial Cooperation in Criminal Matters, was approved by the Legislative Assembly (''LA'') in July 2006 and became effective November 1, 2006.

Finally, while Customs authorities in Macau require declaration of cross-border trade movements in goods and valuables, there are currently no provisions to monitor or declare cross-border currency movements in and out of Macau. Macanese authorities have stated they are undertaking a study on this issue that will help inform authorities on the development of a potential strategy to effectively address cross-border currency movements. However, no specific strategy has been formulated to date.

While these efforts are important and welcome signs of Macau's overall progress in strengthening its anti-money laundering and combating the financing of terrorism regime, full and comprehensive implementation of these measures in all the covered sectors will need to follow.

C. Banco Delta Asia's Subsequent Developments

Shortly after the issuance of our finding and Notice of Proposed Rulemaking, the Macau Monetary Authority appointed a three person ''administrative committee'' that temporarily replaced the senior management of the bank to oversee the daily operations of the bank and address the concerns we raised.[17] Although the executive order appointing the committee and establishing their six-month term has twice been extended, no plan has been proffered to change permanently the management or ownership structure of the bank, notwithstanding the egregious historical practices detailed below.[18] Given the possibility that the bank will be returned to the control of its former management and primary shareholder in the future, our ongoing concerns about their historical practices and their potential for recidivism detailed below remain a reasonable basis both for our conclusion that Banco Delta Asia is of primary money laundering concern and for our imposition of a special measure to safeguard the U.S. financial system.

Representatives of the bank informed us that the government-appointed administrative committee has taken steps to address many of the money laundering concerns that we previously identified.[19] For example, two independent accounting firms were retained [20] to investigate the allegations in the Notice of Proposed Rulemaking, to assess the weaknesses in the bank's internal anti-money laundering procedures, and to assist in the development of a revised anti-money laundering program (a process that reportedly is still ongoing more than a year later). These representatives also reported that the administrative committee has begun to recruit a permanent compliance officer [21] and that all North Korean-related accounts previously maintained by the bank have been closed.

Despite these representations, we continue to have serious concerns regarding the bank's potential to be used, wittingly or unwittingly, for illicit purposes. In fact, questions regarding the completeness and accuracy of the information and records provided by the bank to the accounting firm retained to help address the bank's weaknesses resulted in the firm's disclaimer that its reported findings did not constitute a reliable audit. Our investigation has corroborated these concerns.[22] For example, we are aware of multiple North Korean-related accounts that the bank did not identify to the accounting

[15] The domestic currency of Macau. As of February 2007, the exchange rate for patacas to U.S. dollars was approximately 8:1.

[16] The Macanese government recognizes both ''Macau'' and ''Macao'' as the correct spelling of the jurisdiction. Certain government agencies and publications use the more traditional Portuguese spelling, Macao.

[17] The administrative committee consists of the Chief Executive Officer of a note-issuing bank in Macau, the Deputy Director of the Macau Monetary Authority Internal Audit Department, and an attorney from a prominent Macanese law firm. No employees or former employees of the bank were appointed to the administrative committee. The present term is scheduled to continue through March 2007.

[18] Even to the extent that the bank's former management is permanently replaced, we note that the former chief executive officer and chairman of the board is also the controlling owner of the bank and would still possess significant influence over the operations of the bank.

[19] The bank met with representatives from the U.S. Government in November 2005, and February and July 2006. The bank also provided information in writing through the comment process described in the Notice of Proposed Rulemaking.

[20] According to the bank's representations to us, one firm was retained by the Macau Monetary Authority and one was retained by the bank under the oversight of the administrative committee.

[21] We have recently been informed that Banco Delta Asia has hired a compliance officer.

[22] These conclusions were derived in part from classified sources, but primarily from an independent review by a large international accounting firm of Banco Delta Asia's activity with North Korean-related clients and a separate U.S. Government review of Banco Delta Asia documentation, including that used to conduct the independent review.

firm and, hence, the accounting firm did not review.

In a review of recently obtained data pertaining to Banco Delta Asia, we verified the bank had grossly inadequate controls in place to deter or detect money laundering or other illicit activity.[23] Prior to the government's appointment of the administrative committee, there was a systemic lack of due diligence, including:

- Failure to take reasonable measures to identify suspicious activity, suspicious entities, and bulk cash activity inconsistent with the stated business of the bank's clients;
- Failure to obtain or maintain sufficient information regarding identity verification and the nature of business activities in customer files;
- Failure to adequately control and retain documents relating to the bank's largest wholesale bulk cash customers;
- Failure to consistently follow its own policies and procedures with respect to multiple business offerings, including screening for counterfeit currency;
- Failure to effectively rate the risk of its customer base; to monitor, on an ongoing basis, accounts that should have been designated as high risk; to take corrective action against entities in which illicit activity was detected;
- Failure to update or use sufficient information technology systems when manual systems proved inadequate;
- Failure to regularly update its anti-money laundering policies with new information or best practices; and
- Failure to internally audit the adequacy of the compliance department at the bank.

In a review of this same data,[24] we have also verified that the bank's grossly inadequate due diligence facilitated unusual or deceptive financial practices by North Korean-related clients. These practices have included:

- Suppressing the identity and location of originators of transactions and arranging for funds transfers via third parties.
- Repeated bank transfers of large, round-figure sums both to and from accounts held at other banks that appear to have no licit purpose and may be indicative of layering activity.
- The routine use of cash couriers to move large amounts of currency, usually U.S. dollars, in the absence of any credible explanation of the origin or purpose for the cash transactions. For example, records from 2002 show that one North Korean-linked entity deposited the equivalent of over U.S. $50 million, accounting for more than half of Banco Delta Asia's bulk cash deposits that year.
- Internal book transfers involving the movement of funds among accounts and accountholders via intra-bank transfers occurring repeatedly and in large, round-figure sums. This sometimes involved shifting currencies and significant round-figure transfers between business and personal accounts.[25]

Moreover, in our review of this same data, we became aware that the extent to which the bank was historically used for illicit activity exceeds our original findings and reveals a deliberate effort to attract and maintain high-risk accounts regardless of their nexus to illicit activities. A review of recently obtained data pertaining to Banco Delta Asia's historical activity has established the following:[26]

- Many North Korean-related individuals and companies banking at Banco Delta Asia had connections to entities involved in trade in counterfeit U.S. currency, counterfeit cigarettes, and narcotics, including several front companies suspected of laundering hundreds of millions of dollars in cash through Banco Delta Asia.[27] The bank did not conduct due diligence to attempt to verify the source of the unusually large currency deposits made involving these clients.
- Despite widely reported currency counterfeiting concerns, the bank provided a discount as an incentive to a high-risk North Korean-related bulk currency depositor to encourage its continued use of the bank, and continued to accept deposits from that customer even after it had knowledge that another institution had rejected those transactions.

These activities, in aggregate, should have raised significant concerns at the bank. Internal bank documents reveal that in the few cases where bank employees documented their concerns over the potential for money laundering activity by entities making commercially unjustifiable large cash deposits or engaged in other suspicious behavior, senior management of the bank consistently failed to take any action when appropriate explanations for the activity were not provided. In fact, senior management in certain cases would verbally vouch for the customers in question without any documentary evidence and indicate that the transactions should continue to be processed.[28]

Banco Delta Asia provided North Korean-related entities with tailored services that allowed those entities to engage in extraordinarily deceptive financial activity. For example, two related business accountholders, which accounted for more than 30 percent of the bank's bulk cash turnover over a multiple year period, provided intermediary financial services on behalf of North Korean banks at least in part to disguise the origins of the transactions. Bank documents reveal that Banco Delta Asia had knowledge of the relationships between the banks and these entities, willingly obscured the identity of the transacting institutions, and agreed to continue treating the accounts as business accounts, not banking accounts, despite activity consistent with banking.

Even after our finding of primary money laundering concern, the bank's management dismissed concerns presented by independent reviewers of the bank's shortcomings involving customer identification and ongoing due diligence obligations. For example, bank managers asserted that Banco Delta Asia's North Korean client banks were low-risk based on the effective supervision by the Central Bank of North Korea and the unlikelihood that North Korean government-owned entities would be used for illicit purposes. As publicly available information clearly contradicted these assumptions, the bank management's claims seem overly permissive and fail to meet even the most basic due diligence standards. In fact, the Macau Monetary Authority informed the bank in 2004 in writing that North Korea lacked transparency in supervisory standards. It recommended that the bank either strengthen its due diligence procedures and establish a detailed procedure manual for dealing with North Korean banks, or scale down or terminate this type of risky business. Nevertheless, the management of the bank continued to provide uninterrupted financial services to such customers with minimal or no due diligence. In fact, in the face of concerns expressed by the Macau Monetary Authority and the U.S. Department of the Treasury, a senior bank official

[23] See supra footnote 22.

[24] See supra footnote 22.

[25] Inasmuch as Banco Delta Asia was the sole institution involved in the processing of these transactions, and considering our concerns regarding the bank's potential complicity involving illicit activity, the commingling of funds and the rapid movement of large round-figure amounts via such intra-bank transfers is particularly suspicious as a means of obscuring the true nature and source of the funds involved.

[26] See supra footnote 22.

[27] This level of activity is significant considering the bank reported the equivalent of only $390 million in total customer deposits immediately prior to our Notice of Proposed Rulemaking.

[28] See supra footnote 22.

assured the public that Banco Delta Asia's cessation of business with North Korean accountholders was only a temporary measure to resolve the bank's dispute with FinCEN.[29]

Representatives of the bank maintain that the administrative committee has taken or is in the process of taking some measures to address the concerns raised in our finding and Notice of Proposed Rulemaking, including terminating all North Korean-related accounts, conducting a risk assessment of all accountholders, drafting a revised anti-money laundering program, and upgrading its information technology systems.[30] In one of its comments submitted in response to the Notice of Proposed Rulemaking, the bank stated that these remedial measures and Macau's new regulatory controls would prevent the bank from returning to its former business practices.[31] However, the totality of the information presented above casts significant doubt upon the commitment of the bank, apart from the administrative committee, to resolve effectively the ongoing money laundering vulnerabilities at the bank. The administrative committee's termination of North Korean-related customer relationships does not address effectively the bank's historical proclivity to seek out such customers or the potential of the bank to return to such practices. In fact, historical attempts by bank employees to follow the limited procedures or best practices that were in place at that time were quashed at the highest levels of the bank.

Despite any remedial measures and regulatory changes, this historical pattern of disregard by the bank's management and primary shareholder regarding both the systemic due diligence failures at the bank and the potential use of the bank for illicit purposes, and the resultant likelihood of recidivism upon the dissolution of the administrative committee, leave us concerned about the potential for the bank to continue to be used for money laundering and other illicit purposes. Accordingly, we find that Banco Delta Asia continues to be a financial institution of primary money laundering concern.

III. Imposition of the Fifth Special Measure

Consistent with the finding that Banco Delta Asia is a financial institution of primary money laundering concern, and based upon additional consultations with required Federal agencies and parties, as well as consideration of additional relevant factors, including the comments received on the proposed rule, we are imposing the fifth special measure authorized by 31 U.S.C. 5318A(b)(5) with regard to Banco Delta Asia.[32] That special measure authorizes the prohibition of, or the imposition of conditions upon, the opening or maintaining of correspondent or payable-through accounts [33] by any domestic financial institution or domestic financial agency for, or on behalf of, a foreign financial institution found to be of primary money laundering concern. A discussion of the additional section 311 factors relevant to the imposition of this particular special measure follows.

A. Similar Actions Have Not Been or May Not Be Taken by Other Nations or Multilateral Groups Against Banco Delta Asia

At this time, other countries and multilateral groups have not taken any action against Banco Delta Asia similar to the imposition of the fifth special measure pursuant to section 311, which prohibits U.S. financial institutions and financial agencies from opening or maintaining a correspondent account in the United States for or on behalf of Banco Delta Asia and requires those institutions and agencies to guard against indirect use by Banco Delta Asia of the foreign correspondent accounts they maintain. After the issuance of the Notice of Proposed Rulemaking, however, the government of Macau did indicate its concern with illicit money flows into Banco Delta Asia by freezing accounts believed to be associated with illicit North Korean-related activity.

B. The Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance for Financial Institutions Organized or Licensed in the United States

The fifth special measure imposed by this rule prohibits covered financial institutions from opening or maintaining correspondent accounts in the United States for, or on behalf of, Banco Delta Asia. As a corollary to this measure, covered financial institutions also are required to take reasonable steps to apply due diligence to all of their correspondent accounts to ensure that no such account is being used indirectly to provide services to Banco Delta Asia. The burden associated with these requirements is not expected to be significant, given that we are not aware of any covered financial institution that maintains a correspondent account directly for Banco Delta Asia. Moreover, there is a minimal burden involved in transmitting a one-time notice to all correspondent accountholders concerning the prohibition on indirectly providing services to Banco Delta Asia. In addition, covered financial institutions generally apply some degree of due diligence in screening their transactions and accounts, often through the use of commercially available software, such as that used for compliance with the economic sanctions programs administered by the Department of the Treasury's Office of Foreign Assets Control. As explained in more detail in the section-by-section analysis below, financial institutions should be able to adapt their existing screening procedures to comply with this special measure. Thus, the due diligence that is required by this rule is not expected to impose a significant additional burden upon covered financial institutions.

C. The Action or Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities Involving Banco Delta Asia

Banco Delta Asia is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the fifth special measure against Banco Delta Asia will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. In addition, as the bank historically sought out high-risk customers that represented

[29] See *http://www.forbes.com/finance/feeds/afx/2005/09/18/afx2230247.html* ''Macau Banco Delta Asia halts NKorea business, denies money laundering-report.'' (19 September 2005)

[30] The bank has indicated that it has not yet fully implemented new policies, procedures, and controls for money laundering prevention.

[31] Additional comments submitted on behalf of the bank are discussed in Section IV of this Final Rule.

[32] See supra footnote 3.

[33] For purposes of the rule, a correspondent account is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank (see 31 U.S.C. 5318A(e)(1)(B), as implemented in 31 CFR 103.175(d)(1)(ii)).

entire business lines and a material amount of its overall business, we believe that any legitimate use of Banco Delta Asia is significantly outweighed by its potential and reported use to promote or facilitate money laundering. Moreover, in light of the existence of multiple alternative banks in Macau, we believe that imposition of the fifth special measure against Banco Delta Asia will not impose an undue burden on legitimate business activities in Macau.

D. The Action Enhances U.S. National Security and Complements U.S. Foreign Policy

The exclusion from the U.S. financial system of banks such as Banco Delta Asia that serve as conduits for significant money laundering activity and that participate in other financial crime enhances U.S. national security by making it more difficult for criminals to access the substantial resources and services of the U.S. financial system. In addition, the imposition of the fifth special measure against Banco Delta Asia complements the U.S. government's overall foreign policy strategy of making entry into the U.S. financial system more difficult for high-risk financial institutions located in jurisdictions with weak or poorly implemented and enforced anti-money laundering controls.[34]

IV. Notice of Proposed Rulemaking and Comments

We received two comment letters on the Notice of Proposed Rulemaking within the timeframe established in the Notice.[35] Additional comments were submitted on behalf of Banco Delta Asia subsequent to that timeframe but were considered at the bank's request for purposes of this rulemaking. Additionally, we met with representatives of Banco Delta Asia on three separate occasions after the close of the comment period. We did not receive any comments addressing our description in the Notice of Proposed Rulemaking of the illicit activities of North Korea.[36]

One comment letter was from an individual at a U.S. university. This comment suggested that the potential for indirect access by an entity of primary money laundering concern was not adequately addressed by the notification provision and requirement to monitor for indirect access. The commenter did not suggest a viable alternative, and we believe that the combination of notification and screening provides the appropriate balance between effectiveness and burden in preventing Banco Delta Asia from accessing correspondent accounts at covered financial institutions. This commenter also expressed concern over the potential difficulty for detecting indirect access by Banco Delta Asia, considering its multiple branches and subsidiaries and its relationship to its parent company and its other subsidiaries. The commenter provided a description of what she considered best practices for institutions to identify indirect access in light of this perceived difficulty. As we indicated in the Notice of Proposed Rulemaking, the scope of the finding of primary money laundering concern, and therefore the target of the imposition of special measure, is limited only to Banco Delta Asia and its subsidiaries, not to its parent company or any of the parent company's other subsidiaries.[37] Additionally, although this final rule requires covered financial institutions to take certain minimum due diligence measures, the methodology or best practices for implementing those requirements falls outside the scope of this rulemaking.

All of the remaining comments, both within and outside of the timeframe designated in the Notice of Proposed Rulemaking, were submitted on behalf of Banco Delta Asia. The bank requested that FinCEN revoke the finding of primary money laundering concern and the Notice of Proposed Rulemaking in light of remedial steps the bank claims that it, and the government of Macau, had taken or are in the process of taking to address the concerns we raised. As indicated above, however, our primary concern regards a pattern of activity by the former and presumed future senior management and owners of the bank to ignore, facilitate, or even encourage illicit activity. Consequently, despite any preliminary steps taken under the oversight of the administrative committee, we remain concerned about the extent to which the bank still could be used for illicit purposes.

In its comments, the bank also addressed the statutory criteria we are required to consider when imposing the special measure to prohibit covered financial institutions from opening or maintaining correspondent accounts for Banco Delta Asia. The bank cited the fact, and we acknowledged in the proposed rule, that no other countries or jurisdictions had taken similar action to the one we were proposing. However, after the issuance of the Notice of Proposed Rulemaking asserting illicit flows of money into Banco Delta Asia involving North Korean-related entities, the Government of Macau was concerned enough to freeze some of the funds in those accounts. The bank further indicated that the jurisdiction of Macau, immediately following the issuance of the Notice of Proposed Rulemaking, had assumed operational control of the bank and provided liquidity after roughly one-third of the bank's total deposits were withdrawn by the bank's depositors. The bank cited these measures as indicia of Macau's faith in the bank and suggested that any concerns we may have had about the bank should be satisfied in light of Macau's oversight of and investment in the future of the bank. Despite our comments about the jurisdictional developments in section II.B., above, Macau's imposed oversight of the bank not only does not negate our original findings but, to the extent such action indicates a lack of faith in the bank's ability to autonomously address its significant money laundering vulnerabilities, may be viewed as supporting our finding of primary money laundering concern.

The bank also cited the lack of confidence in the bank by the bank's depositors as evidence of a ''significant adverse impact * * * on legitimate business activities involving [the bank],'' another statutory criteria we must consider. Although we recognize that certain customers of Banco Delta Asia will be affected by this rulemaking, the availability of alternative banking services in Macau will alleviate the burden on legitimate business activities within that jurisdiction. Moreover, to the extent that the bank has not sufficiently implemented remedial measures that address the deficiencies outlined above, we continue to believe that the impact of the rule upon any legitimate activities of the bank is significantly outweighed by the potential for the bank to be used for money laundering or other illicit financial activity.

Finally, the bank suggested in its comments that imposing the fifth special measure would be inconsistent with U.S. foreign policy considerations. We disagree.

Accordingly, the statutory criteria for finding Banco Delta Asia to be a financial institution of primary money laundering concern and for imposing

[34] As previously mentioned, although Macau's legislative and regulatory developments regarding its overall anti-money laundering and counter-financing of terrorism regime are encouraging, Macau will need to more fully demonstrate implementation to continue improving its weaknesses.

[35] Comments were to be submitted by October 20, 2005. See 70 FR 55217 (September 20, 2005).

[36] See 70 FR 55214 (September 20, 2005) at 55215.

[37] See 70 FR 55218, FN 5.

the fifth special measure have been fully addressed.

V. Section-by-Section Analysis

The final rule prohibits covered financial institutions from opening or maintaining any correspondent account for, or on behalf of, Banco Delta Asia. Covered financial institutions are required to apply due diligence to their correspondent accounts to guard against their indirect use by Banco Delta Asia. At a minimum, that due diligence must include two elements. First, a covered financial institution must notify its correspondent accountholders that the account may not be used to provide Banco Delta Asia with access to the covered financial institution. Second, a covered financial institution must take reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. A covered financial institution must take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of correspondent accounts by Banco Delta Asia, based on risk factors such as the type of services offered by, and geographic locations of, its correspondents.

A. 103.193(a)—Definitions

1. Banco Delta Asia

Section 103.193(a)(1) of this rule defines Banco Delta Asia to include all branches, offices, and subsidiaries of Banco Delta Asia operating in Macau or in any jurisdiction. These branches and offices include, but are not necessarily limited to, the Amaral, Antonio, Barca, Campo, Ioa Hon, Lisboa, Outubro, and Tap Sac branches in Macau, the Airport Service Centre, Financial Services Centre, Macao Administrative Centre, The Bank Centre, and the Tokyo Representative Office. Banco Delta Asia's subsidiaries include, but are not necessarily limited to, Delta Asia Credit Ltd. and Delta Asia Insurance Limited. FinCEN will provide updated information, as it is available; however, covered financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of Banco Delta Asia.

2. Correspondent Account

Section 103.193(a)(2) defines the term ''correspondent account'' by reference to the definition contained in 31 CFR 103.175(d)(1)(ii). Section 103.175(d)(1)(ii) defines a correspondent account to mean an account established for a foreign bank to receive deposits from, or make payments or other disbursements on behalf of the foreign bank, or to handle other financial transactions related to the foreign bank.

In the case of a depository institution in the United States, this broad definition of account includes most types of banking relationships between the depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit.

In the case of securities broker-dealers, futures commission merchants, introducing brokers in commodities, and investment companies that are open-end companies (''mutual funds''), we are using the same definition of ''account'' for purposes of this rule that was established in the final rule implementing section 312 of the USA PATRIOT Act.[38]

3. Covered Financial Institution

Section 103.193(a)(3) of the rule defines covered financial institution to include the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- A commercial bank;
- An agency or branch of a foreign bank in the United States;
- A federally insured credit union;
- A savings association;
- A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);
- A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;
- A broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;
- A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and
- A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a-3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1))) and that is registered, or is required to register, with the U.S. Securities and Exchange Commission pursuant to the Investment Company Act.

In the Notice of Proposed Rulemaking, we defined ''covered financial institution'' by reference to 31 CFR 103.175(f)(2), the operative definition of that term for purposes of the rules implementing sections 313 and 319 of the USA PATRIOT Act, and we also included in the definition futures commission merchants, introducing brokers, and mutual funds. The definition of ''covered financial institution'' we are adopting for purposes of this final rule is substantially the same as originally proposed.

B. 103.193(b)—Requirements for Covered Financial Institutions

For purposes of complying with the final rule's prohibition on the opening or maintaining in the United States of correspondent accounts for, or on behalf of, Banco Delta Asia, we expect a covered financial institution to take such steps that a reasonable and prudent financial institution would take to protect itself from loan or other fraud or loss based on misidentification of a person's status.

1. Prohibition of Direct Use of Correspondent Accounts

Section 103.193(b)(1) of the rule prohibits all covered financial institutions from opening or maintaining a correspondent account in the United States for, or on behalf of, Banco Delta Asia. The prohibition requires all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, Banco Delta Asia.

2. Due Diligence Upon Correspondent Accounts To Prohibit Indirect Use

As a corollary to the prohibition on the opening or maintaining of correspondent accounts directly for Banco Delta Asia, section 103.193(b)(2) requires a covered financial institution to apply due diligence to its correspondent accounts[39] that is

[38] *See* 31 CFR 103.175(d)(2)(ii)-(iv).

[39] Again, for purposes of the final rule, a correspondent account is defined as an account

Continued

reasonably designed to guard against their indirect use by Banco Delta Asia. At a minimum, that due diligence must include notifying correspondent accountholders that correspondent accounts may not be used to provide Banco Delta Asia with access to the covered financial institution. For example, a covered financial institution may satisfy this requirement by transmitting the following notice to all of its correspondent accountholders:

Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 103.193, we are prohibited from establishing, maintaining, administering or managing a correspondent account for, or on behalf of, Banco Delta Asia or any of its subsidiaries (including, but not limited to, Delta Asia Credit Limited, and Delta Asia Insurance Limited). The regulations also require us to notify you that you may not provide Banco Delta Asia or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that Banco Delta Asia or any of its subsidiaries is indirectly using the correspondent account you hold at our financial institution, we will be required to take appropriate steps to prevent such access, including, where necessary, terminating your account.

The purpose of the notice requirement is to help ensure that Banco Delta Asia is denied access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of Banco Delta Asia. However, we do not require or expect a covered financial institution to obtain a certification from its correspondent accountholders that indirect access will not be provided in order to comply with this notice requirement. Instead, methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or e-mail to a covered financial institution's correspondent accountholders, informing those accountholders that their correspondent accounts may not be used to provide Banco Delta Asia with indirect access to the covered financial institution, or including such information in the next regularly occurring transmittal from the covered financial institution to its correspondent accountholders.

This final rule also requires a covered financial institution to take reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. For example, a covered financial institution is expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that, on its face, lists Banco Delta Asia as the originator's or beneficiary's financial institution, or otherwise references Banco Delta Asia in a manner detectable under the financial institution's normal business screening procedures. We acknowledge that not all institutions are capable of screening every field in a funds transfer message and that the risk-based controls of some institutions may not necessitate such comprehensive screening. Alternatively, other institutions may perform more thorough screening as part of their risk-based determination to perform ''additional due diligence,'' as described below. An appropriate screening mechanism could be the mechanism currently used by a covered financial institution to comply with various legal requirements, such as the commercially available software used to comply with the sanctions programs administered by the Office of Foreign Assets Control.

Notifying correspondent accountholders and taking reasonable steps to identify any indirect use of correspondent accounts by Banco Delta Asia in the manner discussed above are the minimum due diligence requirements under this final rule. Beyond these minimum steps, a covered financial institution should adopt a risk-based approach for determining what, if any, additional due diligence measures it should implement to guard against the indirect use of its correspondent accounts by Banco Delta Asia, based on risk factors such as the type of services it offers and the geographic locations of its correspondent accountholders.

A covered financial institution that obtains knowledge that a correspondent account is being used by a foreign bank to provide indirect access to Banco Delta Asia must take all appropriate steps to prevent such indirect access, including, when necessary, terminating the correspondent account. A covered financial institution may afford such foreign bank a reasonable opportunity to take corrective action prior to terminating the correspondent account. We have added language in the final rule clarifying that, should the foreign bank refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will not be available to Banco Delta Asia, the covered financial institution must terminate the account within a commercially reasonable time. This means that the covered financial institution should not permit the foreign bank to establish any new positions or execute any transactions through the account, other than those necessary to close the account. A covered financial institution may reestablish an account closed under this rule if it determines that the account will not be used to provide banking services indirectly to Banco Delta Asia.

3. Reporting Not Required

Section 103.193(b)(3) of the rule clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. However, a covered financial institution must document its compliance with the requirement that it notify its correspondent accountholders that the accounts may not be used to provide Banco Delta Asia with access to the covered financial institution.

VI. Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The correspondent accounts that the bank previously held in the United States were closed, and we have no knowledge of any small covered financial institutions maintaining correspondent accounts for other foreign banks that presently maintain a correspondent relationship with Banco Delta Asia.[40] It therefore appears that Banco Delta Asia no longer holds correspondent accounts in the United States and that most if not all of the nested correspondent accounts to which Banco Delta Asia has indirect access would be with large covered financial institutions. Thus, the prohibition on establishing or maintaining such correspondent accounts will not have a significant impact on a substantial number of small entities. In addition, all covered financial institutions currently must exercise some degree of due diligence in order to comply with various legal requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions

established by a covered financial institution for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. For purposes of this definition, the term *account* means any formal banking or business relationship established to provide regular services, dealings, and other financial transactions. See 31 CFR 103.175(d)(2).

[40] Despite Banco Delta Asia's representation that the majority of its correspondent accounts at foreign financial institutions were terminated after our finding of primary money laundering concern, the self-reported list of the bank's correspondent accounts in the Banker's Almanac was identical before and after our finding, making it difficult to know with certainty what institutions actually maintain correspondent accounts with the bank.

programs administered by the Office of Foreign Assets Control, can be modified to monitor for the use of correspondent accounts by Banco Delta Asia. Thus, the due diligence that is required by this rule—i.e., the one-time transmittal of notice to correspondent accountholders and screening of transactions to identify any indirect use of a correspondent account—is not expected to impose a significant additional economic burden on small covered financial institutions.

VII. Paperwork Reduction Act of 1995

The collection of information contained in the final rule has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and has been assigned OMB Control Number 1506–0045. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The only requirements in the final rule that are subject to the Paperwork Reduction Act are the requirements that a covered financial institution notify its correspondent accountholders that the correspondent accounts maintained on their behalf may not be used to provide Banco Delta Asia with access to the covered financial institution and the requirement that a covered financial institution document its compliance with this obligation to notify its correspondents. The estimated annual average burden associated with this collection of information is one hour per affected financial institution. We received no comments on this information collection burden estimate.

Comments concerning the accuracy of this information collection estimate and suggestions for reducing this burden should be sent (preferably by fax (202–395–6974)) to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (or by the Internet to *Alexander_T._Hunt@omb.eop.gov*), with a copy to FinCEN by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, ''Attn: Section 311—Imposition of Special Measure Against Banco Delta Asia'' or by electronic mail to *regcomments@fincen.treas.gov* with the caption ''Attn: Section 311—Imposition of Special Measure Against Banco Delta Asia'' in the body of the text.

VIII. Executive Order 12866

This rule is not a significant regulatory action for purposes of Executive Order 12866, ''Regulatory Planning and Review.''

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, and Foreign banking.

Authority and Issuance

■ For the reasons set forth in the preamble, Part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

■ 2. Subpart I of Part 103 is amended by adding new § 103.193 as follows:

§ 103.193 Special measures against Banco Delta Asia.

(a) *Definitions.* For purposes of this section:

(1) *Banco Delta Asia* means all branches, offices, and subsidiaries of Banco Delta Asia operating in any jurisdiction, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited.

(2) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii).

(3) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a-3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register, with the U.S. Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions—(1) Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Banco Delta Asia.

(2) *Due diligence of correspondent accounts to prohibit indirect use.*

(i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Banco Delta Asia. At a minimum, that due diligence must include:

(A) Notifying correspondent accountholders the correspondent account may not be used to provide Banco Delta Asia with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Banco Delta Asia.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Banco Delta Asia shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Banco Delta Asia.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: March 14, 2007.

William F. Baity,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 07–1313 Filed 3–14–07; 11:41 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–001]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the special local regulations at 33 CFR 100.518. This rulemaking is intended to accommodate changes in event dates for recurring marine events specified in this regulation. The marine events included in this special local regulation include the Safety at Sea Seminar, U.S. Naval Academy Crew Races and the Blue Angels Air Show. This rule is intended to restrict vessel traffic in portions of the Severn River during the period of these marine events and is necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective March 24, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–07–001) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Inspections and Compliance Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 1, 2007, we published a Notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; College Creek, Weems Creek and Carr Creek, Annapolis, MD in the **Federal Register** (72 FR 4669). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, area newspapers and local radio stations.

Background and Purpose

We are amending 33 CFR 100.518 to accommodate changes to the enforcement period for U.S. Naval Academy sponsored marine events. Each year the U.S. Naval Academy hosts various marine events on the Severn River adjacent to the academy. Organized collegiate crew races are typically held annually during weekends in March, April and May. The Blue Angels air show is normally scheduled during graduation week at the U.S. Naval Academy. Maritime traffic is prohibited from using the regulated area of the Severn River during air show performances in accordance with Federal Aviation Administration requirements. The dates for marine events for 2007 will be; Safety at Sea Seminar on March 24, 2007; U.S. Naval Academy crew races on May 6 and May 27, 2007; and the Blue Angels air show on May 23 and May 24, 2007. The special regulation will be enforced from 5 a.m. to 6 p.m. on those days and if the event's daily activities should conclude prior to 6 p.m., enforcement of this regulation may be terminated for that day at the discretion of the Patrol Commander. The U.S. Naval Academy is the sponsor for all of these events and intends to hold them annually on the dates provided in 33 CFR 100.518.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, Maryland.

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 effect of this action merely establishes the dates on which the existing regulations would be enforced. It would not impose any additional restrictions on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Severn River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would merely establish the dates on which the existing regulations would be enforced. It would not impose any additional restrictions on vessel traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under that section.

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—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Revise paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), (c)(1)(iii) and (c)(2) and add paragraph (c)(3) of § 100.518 to read as follows:

§ 100.518 Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, Maryland.

* * * * *

(c) *Enforcement period.* (1) This section will be enforced from 5 a.m. to 6 p.m. on days when the following events are held:

(i) Safety at Sea Seminar, held on the fourth Saturday in March;

(ii) Naval Academy Crew Races held on the last weekend in March and every weekend in April and May;

(iii) Blue Angels Air Show, held on the fourth Tuesday and Wednesday in May.

(2) Should the event's daily activities conclude prior to 6 p.m., enforcement of this section may be terminated for that day at the discretion of the Coast Guard Patrol Commander.

(3) The Commander, Fifth Coast Guard District will publish a notice in the Fifth Coast Guard District Local Notice to Mariners announcing the specific event dates and times. Notice will also be made via marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

Dated: March 8, 2007.

Larry L. Hereth,

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

[FR Doc. E7–4938 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–004]

RIN 1625–AA08

Special Local Regulations for Marine Events; St. Mary's River, St. Mary's City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement period for the ''St. Mary's Seahawk Sprint'' held annually on the waters of the St. Mary's River, near St. Mary's City, Maryland. This special local regulation is intended to restrict vessel traffic in portions of the St. Mary's River and is necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 7 a.m. to 5 p.m. on April 21, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–07–004) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 12, 2007, we published a Notice of Proposed Rulemaking (NPRM) entitled Special Local Regulations for Marine Events; St. Mary's River, St. Mary's City, MD in the **Federal Register** (72 FR 6510). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On April 21, 2007, St. Mary's College of Maryland will sponsor the ''Seahawk Sprint'' crew races on the waters of the St. Mary's River. The event will consist of intercollegiate crew rowing teams racing along a 2000 meter course on the waters of the St. Mary's River. A fleet of spectator vessels is expected to gather near the event site to view the competition. The regulation at 33 CFR 100.527 is effective annually for the St. Mary's College crew races marine event. Paragraph (d) of Section 100.527 establishes the enforcement date for the St. Mary's Seahawk crew races. This regulation temporarily changes the enforcement date from the second Saturday in April to the third Saturday in April, holding the marine event on April 21, 2007. St. Mary's College crew club who is the sponsor for this event intends to hold this event annually; however, they have changed the date of the event for 2007 so that it is outside the scope of the existing enforcement period. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard is temporarily restricting vessel traffic in the event area during the crew races.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the St. Mary's River, St. Mary's City, Maryland.

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 effect of this action merely establishes the date on which the existing regulation would be in effect and would not impose any new restrictions on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would effect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the St. Mary's River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would merely change the date on which the existing regulations would be enforced in the regulated area and would not impose any new restrictions on vessel traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under that section.

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—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. In § 100.527, from 7 a.m. to 5 p.m. on April 21, 2007, suspend paragraph (d).

■ 3. In § 100.527, from 7 a.m. to 5 p.m. on April 21, 2007, add a new paragraph (d) to read as follows:

§ 100.527 St. Mary's River, St. Mary's City, Maryland.

* * * * *

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 5 p.m. on April 21, 2007. A notice of enforcement of this section will be disseminated through the Fifth Coast Guard District Local Notice to Mariners announcing the specific event date and times. Notice will also be made via marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

Dated: March 8, 2007.

Larry L. Hereth,

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

[FR Doc. E7–4936 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 104, 105 and 106

[Coast Guard–2006–24196]

RIN 1652–AA41

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: United States Coast Guard, DHS.

ACTION: Confirmation of effective date; approval of new Collection of Information (COI).

SUMMARY: In the final rule with this same title published January 25, 2007, we noted that the Office of Management and Budget (OMB) had not approved an extension and change to the collection of information associated with the amendments to 33 CFR 104.267, 105.257 and 106.262, requiring vessel and facility owners and operators wishing to grant unescorted access to a new hire prior to receipt of a TWIC to enter the new employee information into a Coast Guard owned and maintained Web site, *homeport.uscg.mil*, and await results of an expedited threat assessment. OMB has since approved that collection of information as Information Collection number 1625–0110, Maritime Identification Credentials—Title 33 CFR Part 125. The change was requested to extend an existing collection that was due to expire, and expand the collection to include the collection of information for the ''new hire'' provisions.

DATES: 33 CFR 104.267, 105.257, and 106.262, published January 25, 2007 (72 FR 3492) will be effective March 26, 2007. The OMB approval was granted on January 12, 2007, and expires January 31, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call Kathryn Sinniger, Coast Guard, telephone 202–372–3858. If you have questions on viewing the docket (USCG–2005–20258), call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION: Sections 104.267, 105.257 and 106.262 of title 33 of the Code of Federal Regulations (CFR) provide an option for owners, operators or security officers of MTSA regulated vessels or facilities to enter new employee information into a Coast Guard owned and maintained Web site, *homeport.uscg.mil*, and await the results of an expedited threat assessment in order to grant the new employee unescorted access prior to receipt of a TWIC. These sections are known as the ''new hire'' provision.

The ''new hire'' provision requirements affecting Homeport were added to collection 1625–0110 ''Maritime Identification Credentials—Title 33 CFR Part 125,'' which expired on November 30, 2006. The three year renewal for 1625–0110 was submitted to OMB on October 6, 2006, and an amendment to that renewal reflecting changes due to the ''new hire'' provision was submitted to OMB on December 29, 2006. The revision changed the collection, once the TWIC program goes into effect, to make the submission of new hire information voluntary but require owners and operators to wait until they receive a positive verification from Homeport before granting unescorted access to the new hire. The government's need for the information, the type of information to be submitted, the method of submission, and the frequency of submission should not change from the previously approved collection.

Submitting the new hire information is a collection of information under OMB control no. 1625–0110. The final rule that contained the provisions for these submissions was published in the **Federal Register** on January 25, 2007, and is available electronically through the docket (USCG–2006–24196) Web site at *http://dms.dot.gov/* and will become effective on March 26, 2007.

As required by 44 U.S.C. 3507(d), we submitted a copy of the final rule to OMB for its review. On January 12, 2007, after reviewing the rule, OMB approved the collection of information required by this final rule under OMB control no. 1625–0110.

Dated: March 12, 2007.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. E7–4847 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061020273-7001-03; I.D. 031207A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 69,558 lb (31,551 kg) of commercial summer flounder quota to the Commonwealth of Virginia from its 2007 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective March 16, 2007 through December 31, 2007, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, FAX (978) 281–9135.

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

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 69,558 lb (31,551 kg) of its 2007 commercial quota to Virginia to cover

landings of eight North Carolina vessels granted safe harbor in Virginia due to winter storm conditions between February 13 and 15, 2007. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2007 are: North Carolina, 2,680,308 lb (1,215,767 kg); and Virginia, 2,208,376 lb (1,001,703 kg).

Classification

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

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

Dated: March 12, 2007.

Alan D. Risenhoover,

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

[FR Doc. E7–4886 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 52
Monday, March 19, 2007

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 HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–012]

RIN 1625–AA08

Special Local Regulations for Marine Events; Sail Virginia 2007, Port of Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for ''Sail Virginia 2007'' marine event. This action is necessary to provide for the safety of life on navigable waters before, during, and after Sail Virginia 2007 activities. This proposed action is intended to restrict vessel traffic in the vicinity of the tall ship parade as the parade transits the Chesapeake Bay, Hampton Roads, the James and Elizabeth Rivers and Norfolk Harbor.

DATES: Comments and related material must reach the Coast Guard on or before April 18, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 391–8149. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG TaQuitia Winn, U.S. Coast Guard Sector Hampton Roads, at (757) 668–5580.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–012), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During the period June 7–12, 2007, the City of Norfolk and Norfolk Festevents Ltd. will sponsor ''Sail Virginia 2007'', a tall ships marine event. The six-day event will include more than twenty tall ships from around the world in recognition of the Jamestown 1606–1607 voyage, commemorating the 400th anniversary of our nation's birth place. More than 25 tall ships from around the world have been invited to participate.

Planned events in the Port of Hampton Roads include: The arrival of more than 20 tall ships and other vessels at Lynnhaven Anchorage on June 7 and 8, 2007; a Parade of Sail of approximately 20 tall ships and other vessels from there respective anchorages to Town Point Park, downtown Norfolk, on June 8, 2007; fireworks display adjacent to the Norfolk and Portsmouth seawalls on June 9, 2007; and the scheduled departure of the majority of vessels on June 12, 2007. This event will be combined with the annual Norfolk Harborfest held each June.

The Parade of Sail event planned during this period will be conducted on the waters of the Chesapeake Bay, Hampton Roads the Elizabeth River and Norfolk Harbor, Virginia. Vessels participating in the ''Tall Ships Parade of Sail'' will rendezvous on June 8, 2007 in the vicinity of Thimble Shoal Channel lighted bell buoy ''13'' LLNR 9275 as depicted on NOAA Chart 12222 and will proceed inbound through the Elizabeth River to Norfolk Harbor Entrance Reach terminating at the Norfolk Harbor waterfront.

The Coast Guard anticipates numerous spectator craft for these events. Operators should expect significant vessel congestion along the parade route and viewing areas for the fireworks display.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public in the Port of Hampton Roads during the ''Tall Ship's Parade of Sail'' event. The regulations will establish a clear parade route for the participating vessels and no wake zones along the parade route. The regulations will impact the movement of all vessels operating in the specified areas of the Port.

Vessel operators are also reminded that Norfolk Naval Base will be strictly enforcing the existing restricted area defined at 33 CFR 334.300 during all Sail Virginia 2007 activities.

We recommend that vessel operators visiting the Port of Hampton Roads for this event obtain up to date editions of the following charts of the area: Nos. 12222, 12245, 12253, and 12254 to avoid anchoring within charted cable or pipeline areas.

With the arrival of Sail Virginia 2007 and spectator vessels in the Port of Hampton Roads for this event, it may be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

Because of the danger posed by numerous sailing vessels maneuvering in close proximity of each other during the parade, special local regulations are necessary. For the safety concerns noted

and to address the need for vessel control and vessel safety, all vessel traffic will be temporarily restricted in the vicinity of the parade to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of Chesapeake Bay, Thimble Shoal Channel, Hampton Roads, Elizabeth River, Norfolk Harbor Reach and Norfolk waterfront. The Parade of Sail will consist of naval vessels, private vessels, and tall ships that are scheduled to enter Thimble Shoal Channel at approximately 7:30 a.m. on June 8, 2007. The ships will rendezvous at Thimble Shoal Channel in the vicinity of Thimble Shoal lighted bell buoy ''13'' LLNR 9275, and will proceed inbound through Thimble Shoal Channel. The lead vessel is scheduled to be abreast of Old Point Comfort Light at approximately 9:30 a.m. The parade route includes Norfolk Harbor Entrance Reach, Norfolk Harbor Reach, Craney Island Reach, Lambert Bend, Port Norfolk Reach and Town Point Reach. The larger Sail Virginia 2007 vessels will be berthed in the vicinity of the respective downtown Norfolk and Portsmouth waterfronts as they complete the parade route.

A fleet of spectator vessels is anticipated to gather nearby to view the parade. Because of the danger posed by numerous sailing vessels maneuvering in close proximity of each other and the spectator vessels during the proposed marine event, special local regulations are necessary. In order to provide for the safety of parade participants and spectator vessels the Coast Guard proposes establishing a regulated area restricting all vessel traffic from maneuvering within 100 yards abeam of the parade, 300 yards ahead of the parade and all waters within the parade on June 8, 2007. The duration of the proposed Parade of Sail is anticipated to be approximately seven hours.

The proposed temporary special local regulations will be enforced from 6 a.m. to 3 p.m. on June 8, 2007 for the ''Sail Virginia 2007'' Parade of Sail. These regulations will restrict general navigation in the regulated area during the marine event. The Coast Guard, at its discretion, when practical, will allow the passage of vessels when the parade is not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area during the enforcement period. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

In order to provide for the safety of vessels transiting the area or observing the fireworks display, the Coast Guard intends to implement the regulations found at 33 CFR 100.501 from 9 p.m. to 11 p.m. on June 9, 2007.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Parade of Sail. Although these regulations prevent traffic from transiting a portion of the Chesapeake Bay and Elizabeth River during this event, that restriction is limited to approximately seven hours in duration, affects only a limited area that is totally contained within an already established regulated navigation area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the nature of the event itself may hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Chesapeake Bay, Hampton Roads, Elizabeth River, Norfolk Harbor from 7 a.m. until 3 p.m. June 8, 2007 during this event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: this proposed rule would be in effect for only a limited period, affect only limited areas that are totally contained within an already established regulated navigation area, and marine advisories will be issued allowing mariners to adjust their plans accordingly. Vessel traffic may be allowed to pass through the regulated areas with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through a regulated area during an event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact U.S. Coast Guard Sector Hampton Roads, at the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, and Department of Homeland Security Management Directive 5100.1 which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34) (h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

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. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

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 proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35–T07–012 to read as follows:

§ 100.35–T07–012 Special Local Regulations; Sail Virginia 2007, Port of Hampton Roads, VA.

(a) *Regulated area.* The regulated area includes navigable waters within and 100 yards abeam of, 300 yards ahead of, and all waters between participating vessels transiting the Chesapeake Bay Thimble Shoal Channel, Hampton Roads Norfolk Harbor Entrance Reach, Elizabeth River Craney Island Reach, Lambert Bend, Lambert Bend to Pinner Point, Pinner Point to Town Point Reach, Town Point Reach to Norfolk Harbor, Virginia in support of the ''Sail Virginia 2007'' Parade of Sail marine event.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means any commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any person or vessel authorized by the Coast Guard Patrol Commander or approved by Commander, Coast Guard Sector Hampton Roads to enforce this special local regulation.

(3) *Sail Virginia 2007 Vessels* includes all vessels participating in Sail Virginia 2007 under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(4) *Parade of Sail* is the inbound procession of Sail Virginia 2007 vessels as they navigate designated routes in the port of Hampton Roads on June 8, 2007.

(5) *Spectator vessel* includes any vessel, commercial or recreational, being used for pleasure or carrying passengers that are in the Port of Hampton Roads to observe part or all of

the events attendant to Sail Virginia 2007.

(c) *Special local regulations.* (1) Except for the Official Patrol, participants, and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) Any person in the regulated area must stop immediately when directed to do so by any Official Patrol and then proceed only as directed.

(3) All persons and vessels shall comply with the instructions of the Official Patrol.

(4) When authorized to transit within the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the parade and near other persons and vessels.

(5) The Coast Guard vessels enforcing this section can be contacted on VHF-FM Marine Band Radio, Channels 13 and 16. Coast Guard Sector Hampton Roads can be contacted at telephone number (757) 638–6633.

(6) Coast Guard Sector Hampton Roads will notify the public of changes in the status of this section by Marine Safety Radio Broadcast on VHF-FM Marine Band Radio, Channel 22 (157.1 MHz).

(d) *Enforcement period.* This section will be enforced from 6 a.m. June 8, 2007, to 11 p.m. June 9, 2007.

Dated: March 8, 2007.

Larry L. Hereth

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

[FR Doc. E7–4937 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 070122014–7057–02, I.D. 011907A]

RIN 0648–AV04

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

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

ACTION: Advance notice of proposed rulemaking; extension of public comment period.

SUMMARY: In response to requests from members of the public, NMFS extends the public comment period on an advance notice of proposed rulemaking (ANPR) regarding potential amendments to regulatory requirements for turtle excluder devices (TEDs) for an additional 60 days, through May 18, 2007, for the purpose of receiving comments on the ANPR, published in the **Federal Register** on February 15, 2007.

DATES: Comments will be accepted through May 18, 2007.

ADDRESSES: Written comments on the ANPR and requests for literature cited should be addressed to Michael Barnette, Southeast Regional Office, Office of Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. Comments may also be sent via fax to 727–824–5309, via email to *0648–AV04@noaa.gov*, or to the Federal eRulemaking portal: *http://www.regulations.gov* (follow instructions for submitting comments).

FOR FURTHER INFORMATION CONTACT: Michael Barnette (ph. 727–824–5312, fax 727–824–5309, e-mail *Michael.Barnette@noaa.gov*), Ellen Keane (ph. 978–281–9300 x6526, fax 978–281–9394, e-mail *Ellen.Keane@noaa.gov*), or Tanya Dobrzynski(ph. 301–713–2322, fax (301) 427–2522, e-mail *Tanya.Dobrzynski@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2007, NMFS published an ANPR regarding potential amendments to the regulatory requirements for TEDs (72 FR 7382). The ANPR announced that NMFS is considering amendments to the regulatory requirements for TEDs. Specific changes NMFS is considering include increasing the size of the TED escape opening currently required in the summer flounder fishery; requiring the use of TEDs in the flynet, whelk, calico scallop, and Mid-Atlantic sea scallop trawl fisheries; and moving the current northern boundary of the Summer Flounder Fishery-Sea Turtle Protection Area off Cape Charles, Virginia, to a point farther north. Other potential measures are also being considered. The objective of the proposed measures would be to effectively protect all life stages and species of sea turtle in Atlantic and Gulf of Mexico trawl fisheries where they are vulnerable to incidental capture and mortality. NMFS is seeking public comment on these potential amendments to the TED regulations. NMFS is also soliciting public comment on the need for, and development and implementation of, other methods to reduce bycatch of sea turtles in any commercial or recreational fishery in the Atlantic and Gulf of Mexico where sea turtle conservation measures do not currently exist. That **Federal Register** notice initiated a 30–day public comment period scheduled to end on March 19, 2007.

NMFS subsequently received requests from the public to extend the comment period. These requests stated that more time is necessary to more fully review and provide comments on issues mentioned in the ANPR. In this document NMFS is extending the public comment period for an additional 60 days, until May 18, 2007, to allow additional time for these requesters and other interested parties to provide comments.

Dated: March 13, 2007.

Samuel D. Rauch III,

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

[FR Doc. E7–4884 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 030607C]

RIN 0648–AV39

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 13 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 13 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Amendment 13), incorporating the public hearing document and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce and is requesting comments from the public. The goal of Amendment 13 is to implement an observer service provider mechanism for the scallop fishery that would re-active the industry-funded observer

program and the scallop total allowable catch (TAC) and days-at-sea (DAS) set-aside program to help defray the cost of carrying observers. Observer coverage in the scallop fishery is necessary to monitor the bycatch of finfish and interactions with threatened and endangered species. Amendment 13 specifies criteria for observer service providers, observer certification, decertification, and observer deployment logistics. Additionally, Amendment 13 allows adjustments to the observer program to be done by framework action.

DATES: Comments must be received on or before May 18, 2007.

ADDRESSES: Copies of Amendment 13, including the public hearing document and the IRFA, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*. Amendment 13 is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement.

Written comments on Amendment 13 may be sent by any of the following methods:

- E-mail to the following address: *ScallopAmendment13@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on Scallop Amendment 13'';
- Electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*;
- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Scallop Amendment 13''; or
- Fax to Patricia A. Kurkul, 978–281–9135.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone 978–281–9272, fax 978–281–9135, e-mail *carrie.nordeen@noaa.gov*.

SUPPLEMENTARY INFORMATION: At its February 6–8, 2007, meeting, the Council voted to adopt Amendment 13 for submission to NMFS, and submitted the document and associated analyses on February 16, 2007. The Council held one public hearing on Amendment 13 on February 7, 2007, in Portsmouth, NH, in conjunction with the Council's February meeting.

Since 1999, NMFS has required scallop vessels operating in Scallop Access Areas to pay for observer coverage. This provision operated effectively through a contractual arrangement with an observer provider until June 2004, when the Department of Commerce informed NMFS that it could not renew the contract without resolving possible conflicts with the Miscellaneous Receipts Act and policies regarding augmentation of appropriations. The contract arrangement had enabled vessel owners to pay the observer provider directly for observer deployments, with details of the observer deployment requirements specified through the contract. The expiration of the contract arrangement eliminated the mechanism allowing vessel owners to pay for observer coverage. Even though the mechanism allowing vessel owners to pay for observer coverage was inoperable, the Council continued to establish specifications for the scallop fishery that included observer set-asides (catch amounts and days-at-sea (DAS), depending on fishing area) that could be harvested on observed trips to offset the cost to the industry of observers.

Observer coverage in the scallop fishery is necessary to monitor groundfish bycatch, particularly yellowtail flounder bycatch in the Scallop Access Areas within the groundfish closed areas. It is also needed to monitor interactions of the scallop fishery with sea turtles. Through fiscal year (FY) 2005, the Northeast Fisheries Science Center (NEFSC) funded the necessary levels of observer coverage in the scallop fishery to evaluate bycatch of groundfish and sea turtles by utilizing carryover funding from FY 2004. However, in FY 2006, the NEFSC's level of funding for the observer program provided for only minimal observer coverage in the scallop fishery. This meant that observer coverage would be constrained to levels less than what would be necessary for sufficient monitoring of the yellowtail flounder bycatch total allowable catch (TAC) in Scallop Access Areas and interactions between the scallop fishery and sea turtles in the Mid-Atlantic during the June through October period.

To provide for sufficient observer coverage to monitor the scallop fishery, NMFS re-activated the industry-funded observer program, wherein scallop vessels would be required to procure observer coverage from a certified observer provider, on June 16, 2006 (71 FR 34842), via emergency rule. The emergency rule was extended through June 11, 2007 (71 FR 69073, November 29, 2006).

To provide for observer coverage in the scallop fishery when the Scallop Access Areas re-open on June 15, 2007, and into the future, Amendment 13 proposes to permanently re-activate the industry-funded scallop observer program implemented in 2006 via emergency rule. Like the emergency rule, Amendment 13 proposes to require scallop vessels to procure observer coverage from a NMFS-approved observer service provider. This action proposes criteria to be met in order for an entity to be approved by NMFS as an observer service provider, and proposes the requirements for certified observers for the scallop fishery. Additionally, Amendment 13 proposes to provide a framework mechanism to implement adjustments to the scallop observer program. The current Scallop FMP requires an amendment to make adjustments to the observer program. Providing for a framework mechanism in the Scallop FMP to make adjustments would allow more flexibility to improve the observer program. The type of adjustments that this action proposes to be made via a framework action are modifications to the percent of set-aside, adjustments to how the set-aside is allocated to vessels required to carry an observer, and modifications to how industry funds are collected and administered to cover the cost of observer coverage.

Public comments are being solicited on Amendment 13 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 13 may be published in the **Federal Register** for public comment, following NMFS's evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Management and Conservation Act. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 13 to be considered in the approval/disapproval decision on the amendment. All comments received by May 18, 2007, whether specifically directed to Amendment 13 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 13. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 1. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: March 13, 2007.

James P. Burgess,

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

[FR Doc. E7–4882 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 52

Monday, March 19, 2007

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

March 14, 2007.

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: Non-Profit Customer Voluntary Survey on the Equal Treatment Rule.

OMB Control Number: 0575–NEW.

Summary of Collection: In accordance with the Government Performance and Results Act and Executive Order 13280, Responsibilities of the Department of Agriculture and the Agency for International Development With Respect to Faith-Based and Community Initiatives, the survey will measure Rural Development's implementation of and compliance with the Equal Treatment Rule (7 CFR part 16) as well as implement action plans and measure improvements. The 14 Rural Development programs under the Faith-Based and Community Initiatives provide insured or guaranteed loans and/or grants to eligible applicants (including non-profit entities) located in rural geographic areas to assist them in providing services to beneficiaries, low-income individuals and communities.

Need and Use of the Information: To facilitate improved participant outcome, and in an effort to continuously improve program services, the survey can measure impediments that applicants may have encountered when they submitted an application. The outcome of the Voluntary Survey on the Equal Treatment Rule will provide the general satisfaction level among non-profit borrowers throughout the nation, highlight areas that need improvement, provide a benchmark for future surveys, and improvement in implementation of and compliance with the Equal Treatment Rule.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 4,000.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 320.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–4915 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 14, 2007.

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.

Animal and Plant Health Inspection Service

Title: Cooperative Agricultural Pest Survey.

OMB Control Number: 0579–0010.

Summary of Collection: The Plant Protection Act (7 U.S.C. 3301 *et seq.*)

authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and noxious weed that are new to or not yet widely distributed within the United States. The Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ) have joined forces with the States to create a program called the Cooperative Agricultural Pest Survey. The program allows the States and PPQ to conduct surveys to detect and measure the presence of exotic plant pests and noxious weed and to enter survey data into a national computer-based system (National Agricultural Plant Information System).

Need and Use of the Information: APHIS will collect information using PPQ Form 391 and the information from the survey to predict potential plant pest and noxious weed situations and to promptly detect and respond to the occurrence of new pests and to record the location of those pest incursions that could directly hinder the export of U.S. farm commodities. If the information were not collected, it would seriously affect APHIS ability to timely assist farmers, State personnel, and others involved in agriculture and protection of the environment from the threat pose by migratory pests.

Description of Respondents: State, Local or tribal Government.

Number of Respondents: 155.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,969.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–4919 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0035]

Notice of Request for Extension of Approval of an Information Collection; Low Pathogenic Avian Influenza; Voluntary Control Program and Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for a voluntary control program for the H5/H7 subtypes of low pathogenic avian influenza in poultry and the payment of indemnity for costs associated with eradication of the disease.

DATES: We will consider all comments that we receive on or before May 18, 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–2007–0035 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–2007–0035, 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–2007–0035.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the information collection associated with the voluntary control program for subtypes H5/H7 low pathogenic avian influenza and the payment of indemnity, contact Mr. Andrew Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Low Pathogenic Avian Influenza; Voluntary Control Program and Payment of Indemnity.

OMB Number: 0579–0305.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service has authority for, among other things, administering the National Poultry Improvement Plan (NPIP), the primary purpose of which is to protect the health of the U.S. poultry population. NPIP is a Federal-State-industry cooperative program for the improvement of poultry breeding flocks and products through disease control techniques. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers of breeding poultry must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participation in the other Plan programs.

Under the Plan, the regulations in 9 CFR part 56, ''Control of H5/H7 Low Pathogenic Avian Influenza,'' provide for the payment of indemnity for costs associated with the eradication of H5/H7 subtypes of low pathogenic avian influenza (LPAI). To participate in the LPAI indemnity program, poultry owners must sign a payment, appraisal, and agreement form (VS Form 1–23) and must certify as to whether any other parties hold mortgages on the flock and whether any contracts exist for the growing or care of poultry to be destroyed. In addition, the regulations in 9 CFR part 146, ''National Poultry Improvement Plan for Commercial Poultry,'' require for the voluntary program the use of a number of information collection and recordkeeping activities: VS Form 9–2, Flock Selecting and Testing Report; VS Form 9–4, Summary of Breeding Flock Participation; and VS Form 9–5, Report of Hatcheries, Dealers, and Independent Flocks Participating in the NPIP.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper

performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.586196963 hours per response.

Respondents: Poultry slaughter plants and table-egg producers.

Estimated annual number of respondents: 2,317.

Estimated annual number of responses per respondent: 40.45446698.

Estimated annual number of responses: 93,733.

Estimated total annual burden on respondents: 54,946 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 13th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–4916 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0011]

Notice of Request for Extension of Approval of an Information Collection; Blood and Tissue Collection at Slaughtering and Rendering Establishments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for blood and tissue collection at slaughtering and rendering establishments to enhance animal disease surveillance.

DATES: We will consider all comments that we receive on or before May 18, 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–2007–0011 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–2007–0011, 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–2007–0011.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding an information collection associated with regulations for blood and tissue collection at slaughtering and rendering establishments, contact Dr. Adam Grow, Director, Surveillance and Identification Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–6954. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Blood and Tissue Collection at Slaughtering and Rendering Establishments.

OMB Number: 0579–0212.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, is authorized to prevent the interstate spread of livestock diseases and for eradicating such diseases from the United States when feasible. In connection with this mission, the Veterinary Services (VS) program, APHIS, conducts animal disease surveillance programs, including diagnostic testing.

The regulations in 9 CFR, subchapter C, part 71, ''General Provisions,'' provide for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals) and poultry at slaughter. Persons moving livestock and poultry interstate for slaughter may only move the animals to slaughtering or rendering establishments that have been listed by the Administrator of APHIS. Federal personnel, in conjunction with establishment personnel, are required to complete a listing agreement and a facility inspection report. At APHIS' discretion, slaughtering or rendering establishment personnel will collect blood and tissue samples to assess the prevalence of disease and to identify sources of disease. The test-at-slaughter program necessitates the use of a specimen submission form, VS Form 10–4.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.3278853 hours per response.

Respondents: Slaughtering and rendering establishment personnel.

Estimated annual number of respondents: 155.

Estimated annual number of responses per respondent: 83.2903.

Estimated annual number of responses: 12,910.

Estimated total annual burden on respondents: 4,233 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 13th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–4917 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0180]

Notice of Request for Extension of Approval of an Information Collection; U.S. Origin Health Certificate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection related to the export of animals and animal products from the United States.

DATES: We will consider all comments that we receive on or before May 18, 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–2006–0180 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–2006–0180, 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–2006–0180.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the regulations regarding the export of animals and animal products from the United States, contact Dr. Jack Taniewski, Assistant Director, Technical Trade Services Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–8364. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: U.S. Origin Health Certificate.

OMB Number: 0579–0020.

Type of Request: Extension of approval of an information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. As part of its mission, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS) maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Most countries require a certification that our animals are free from specific diseases and show no clinical evidence of disease. This certification must carry the USDA seal and be endorsed by an APHIS, APHIS accredited, or State veterinarian. VS Form 17–140, U.S. Origin Health Certificate, and its continuation form, VS Form 17–140A, are used to meet this requirement. In addition, other information collection activities used for the export of animals and animal products may include: Environmental certification for export facilities; notarized statements; documentation of undue hardship for animals departing from a specific export location; requests regarding approval or withdrawal of approval of export facilities; and recordkeeping for modification of rail stanchions on vessels.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.291882 hours per response.

Respondents: APHIS accredited and State veterinarians; animal owners; and exporters.

Estimated annual number of respondents: 3,067.

Estimated annual number of responses per respondent: 29.36648.

Estimated annual number of responses: 90,067.

Estimated total annual burden on respondents: 26,289 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 13th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–4918 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

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

AGENCY: USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Southern Recreation Resource Advisory Committee will hold its first meeting in Atlanta, Georgia. The purpose of the meeting is to receive recommendations concerning recreation fee proposals on the George Washington & Jefferson National Forests, National Forests in Florida, National Forests in Alabama, National Forests in Mississippi, National Forest in North Carolina, Ozark-St. Francis National Forest Cherokee National Forest, and the Francis Marion & Sumter National Forest; and to discuss other items of interest related to the Federal Lands Recreation Enhancement Act of 2004. A large part of this first meeting will be dedicated to committee orientation and organizational matters such as election of chair and crafting of by-laws. A final detailed agenda, with any additions/corrections to agenda topics, location, field trips and meeting times, will be sent to regional media sources at least 14 days before the meeting, and hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Caroline Mitchell at PO Box 1270, Hot Springs, AR 71902 no later than 10 days prior to each meeting.

DATES: The meeting will be hold April 9–11, 2007.

ADDRESSES: The meeting will be held at Embassy Suites Hotel, Atlanta, Georgia. Send written comments to Cheryl Chatham Designated Federal Official for the Southern Recreation RAC, US Forest Service, PO Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Cheryl Chatham, Designated Federal Official, US Forest Service, PO Box 1270, Hot Springs, AR 71902 or Caroline Mitchell, Committee Coordinator, US Forest Service, PO Box 1270, Hot Springs, AR 71902, by phone at 501–321–5318.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by March 30, 2007, will have the opportunity to address the Committee at the meeting. The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: March 9, 2007.

Cheryl G. Chatham,

Designated Federal Officer, Southern Region.

[FR Doc. 07–1309 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

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

AGENCY: Northern Region, USDA Forest Service.

ACTION: Notice of new fee sites.

SUMMARY: Pending additional public comments received through the Recreation Site Facility Master Planning process and additional feedback received through the BLM Resource Advisory Council (BLM RAC) review and recommendation process, the following National Forests and National Grasslands in the Northern Region propose to begin charging fees at the following sites: The Beaverhead-Deerlodge National Forest will begin charging fees for camping at Steel Creek Campground ($7/night), Seymour Campground ($7/night), and Dinner Station Campground ($8/night). The Clearwater National Forest will begin charging fees for the overnight rental of Gold Meadow Cabin ($40/night), Kelly Creek Cabin ($40/night), and Liz Creek Cabin ($40/night). The Dakota Prairie Grasslands will begin charging fees for overnight camping at the Hankinson Hills Campground ($6/night). The Flathead National Forest will begin charging fees for the overnight rental of Old Condon Ranger House ($50/night), Silvertip Cabin ($50/night), and Swan Lake Guard Station ($50/night). The Gallatin National Forest will begin charging fees for the overnight rental of Maxey Cabin ($40/night). The Helena National Forest will begin charging fees for the overnight rental of Moose Creek Cabin ($50/night). The Idaho Panhandle National Forest will begin charging fees for the overnight rental of Shoshone Park Cabin ($65/night), and Avery Cabin ($65/night). The Lewis and Clark National Forest will begin charging fees for the overnight rental of Monument Peak Lookout ($55/night), and Kenck Cabin ($45/night). The Lolo National Forest will begin charging fees for the overnight rental of Morgan Case Homestead Cabin Rental ($80/night), the Double Arrow Lookout Cabin Rental ($40/night), the Lake Inez Group Camping site ($25/night), and the Lakeside Campground (Lakeside Campground $10/night and Lakeside Group Camping Site $25/night). The Nex Perce National Forest will begin charging fees for the overnight rental of Adams Ranger House ($40/night), Lookout Butte Lookout ($40/night), and Meadow Creek Cabin ($40/night). Rentals of other cabins and lookouts throughout the Northern Region have shown that publics appreciate and enjoy the availability of historic rental cabins and lookouts as well as campgrounds and group camping sites. Funds from the cabin rentals, campground and group camping sites will be used for the continued operation and maintenance of recreation sites.

DATES: Pending additional public comment regarding these proposed fees, the cabins, lookouts, campgrounds and group camping sites will become available September 1, 2007.

ADDRESSES: Comments may be sent directly to the respective Forest or Grassland: Forest Supervisor, Beaverhead-Deerlodge National Forest, 420 Barrett Street, Dillon, MT 59725–3572; Forest Supervisor, Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544; Grasslands Supervisor, Dakota Prairie Grasslands, 240 W. Century Avenue, Bismark, ND 58503; Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901; Forest Supervisor, Gallatin National Forest, 10 East Babcock Avenue, Bozeman, MT 59715; Forest Supervisor, Helena

National Forest, 2883 Skyway Drive, Helena, MT 59602; Forest Supervisor, Idaho Panhandle National Forest, 3815 Schreiber Way, Coeur d'Alene, ID 83815; Forest Supervisor, Lewis & Clark National Forest, 1101 15th Street North, Great Falls, MT 59403; Forest Supervisor, Lolo National Forest, Building 24, Fort Missoula, Missoula, MT 59804; Forest Supervisor, Nez Perce National Forest, 1005 Highway 13, Grangeville, ID 83530.

FOR FURTHER INFORMATION CONTACT: Joni Packard, Northern Region Recreation Fee Program Coordinator, 406–329–3586.

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

The intent of this notice is to give publics an opportunity to comment if they have concerns or questions about new fees.

The Northern Region currently offers over 140 other cabin rentals, including guard stations and fire lookouts and over 226 fee campgrounds. Many sites are often fully booked throughout their rental season. Local public comments have shown that people desire having these sorts of recreation experiences on these National Forests and Grasslands. The fees proposed are based on local comparable markets and are both reasonable and acceptable for these sorts of unique recreation experience.

People wanting to rent these cabins, lookouts, campgrounds and group camping sites will need to do so through the National Recreation Reservation Service, at *http://www.recreation.gov* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: March 9, 2007.

Kathleen McAllister,

Acting Regional Forester, Northern Region.

[FR Doc. 07–1312 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shoshone National Forest, Wyoming, Notice of New Fee Site; Granger-Thye Act of April 24, 1950 (16 U.S.C. 572 and 580d)

AGENCY: Forest Service, USDA.

ACTION: Notice of new fee sites.

SUMMARY: The Shoshone National Forest will be issuing a Special Use Permit to a Concessionaire(s) to maintain, manage and rent overnight to the public, eight administrative cabins. These cabins are located at various sites on the Greybull Ranger District, Shoshone National Forest. The fee charged will vary from $20 to $100 per night, depending on the type of structure, occupancy capacity and the amenities available. Overnight rental of cabins on adjacent National Forests have shown that publics appreciate and enjoy the availability of historic rental cabins. Funds from the rentals will be used for the continued operation and maintenance of these structures.

DATES: The cabins will become available for rent January 1, 2008.

ADDRESSES: Forest Supervisor, Shoshone National Forest, 808 Meadow Lane Ave., Cody, WY 82414.

FOR FURTHER INFORMATION CONTACT: Joe Hicks, Rangeland Management Specialist, 307–527–6921.

SUPPLEMENTARY INFORMATION: A Special Use Permit is currently issued by the Shoshone National Forest for the purpose of overnight cabin rental. This structure is often fully booked and the concept well received by the public. A comparison of other cabin rental programs indicates that the $20 to $100 per night fee is both reasonable and acceptable for these types of facilities and recreational experience.

People wanting to rent these cabins will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: March 5, 2007.

Rebecca Aus,

Shoshone National Forest, Forest Supervisor.

[FR Doc. 07–1310 Filed 3–16–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–906, A–560–820, and A–580–856]

Postponement of Preliminary Determinations in the Antidumping Duty Investigations of Coated Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea

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

FOR FURTHER INFORMATION CONTACT: Magd Zalok (People's Republic of China), Irina Itkin (Indonesia) or Joy Zhang (Republic of Korea), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162, (202) 482–0656, or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On November 20, 2006, the Department of Commerce (Department) initiated the antidumping duty investigations of coated free sheet paper from the People's Republic of China (PRC), Indonesia and the Republic of Korea. *See Initiation of Antidumping Duty Investigations: Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea*, 71 FR 68537 (November 27, 2006). The notice of initiation stated that, unless postponed, the Department would make its preliminary determinations in these antidumping duty investigations no later than 140 days after the date of the initiation.

On March 1, and 2, 2007, NewPage Corporation (Petitioner) made timely requests pursuant to 19 CFR 351.205(e) for a fifty–day postponement of the preliminary determinations in these investigations. Petitioner requested postponement of the preliminary determinations because it needed additional time to evaluate the questionnaire responses filed by respondents, develop surrogate values (in the PRC investigation) and, if warranted, prepare an allegation of targeted dumping.

For the reasons identified by the Petitioner, and because there are no compelling reasons to deny the request, the Department is postponing these preliminary determinations under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (''Act''), by fifty days to May 29, 2007. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 12, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–4945 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Certain Corrosion–Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On September 11, 2006, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain corrosion–resistant carbon steel flat products (CORE) from Canada. *See Certain Corrosion–Resistant Carbon Steel Flat Products from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53363 (September 11, 2006) (*Preliminary Results*). The review covers shipments of this merchandise to the United States for the period August 1, 2004 through July 31, 2005, made by Dofasco Inc., Sorevco Inc. (Sorevco), and Do Sol Galva Ltd. (collectively Dofasco), and by Stelco Inc.

We gave interested parties an opportunity to comment on our *Preliminary Results*. Based on our analysis of comments, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. For the final dumping margins, see the ''Final Results of Review'' section below.

EFFECTIVE DATE: March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Joshua Reitze, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3782 or (202) 482–0666, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2006, the Department published its preliminary results in the antidumping duty administrative review of CORE from Canada. *See Preliminary Results*. The period of review (POR) is August 1, 2004 through July 31, 2005. This review covers the following Canadian producers of subject merchandise: Dofasco Inc., Sorevco Inc., and Do Sol Galva Ltd., which have been collapsed into a single entity (collectively, Dofasco) for purposes of calculating a dumping margin, and Stelco Inc. (Stelco). *See* the ''Affiliation and Collapsing'' section of the *Preliminary Results*, 71 FR at 53365. The petitioner is U.S. Steel Corporation (petitioner). We gave interested parties an opportunity to comment on our *Preliminary Results*. Petitioner submitted case briefs for Dofasco and Stelco on October 11, 2006. Dofasco submitted a rebuttal brief on October 16, 2006. None of the parties requested a hearing.

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is certain corrosion–resistant steel, and includes flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Included in this order are corrosion–resistant flat–rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'') -- for example, products which have been beveled or rounded at the edges. Excluded from this order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted by parties to this administrative review are addressed in the *Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat Products from Canada*, from Stephen J. Claeys to David M. Spooner, dated March 12, 2007 (*Issues and Decision Memorandum*), which is hereby adopted by this notice. The *Issues and Decisions Memorandum* is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce main building and can be accessed directly at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the *Issues and Decisions Memorandum* are identical in content. A list of the issues addressed in the *Issues and Decisions Memorandum* is appended to this notice.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made minor adjustments in the methodology that was used in the *Preliminary Results* and corrected certain calculation errors. The adjustments are discussed in detail in the *Issues and Decisions Memorandum*.

Final Results of Review

As a result of this review, we determine that the following weighted–average dumping margins exist for the period August 1, 2004 through July 31, 2005:

Manufacturer/Exporter	Weighted Average Margin
Dofasco Inc., Sorevco, Inc., Do Sol Galva Ltd.	5.25 percent

Manufacturer/Exporter	Weighted Average Margin
Stelco Inc.	1.51 percent

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act, and 19 CFR 351.212(b). The Department calculated importer- specific duty assessment rates (or, when the importer was unknown by the respondent, customer–specific duty assessment rates) on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales observations involving each importer to the total entered value of the examined sales observations for that importer. Pursuant to 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediate company(ies) involved in the transaction. For a discussion of this clarification, *see Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposits

Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the Department revoked this order and notified U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after December 15, 2005, the effective date of revocation of this AD order. *See Revocation Pursuant to Second Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion–Resistant Carbon Steel Flat Products from Australia, Canada, Japan, and France*, 72 FR 7010 (February 14, 2007).

Certificate on Reimbursement

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

Notification Regarding Administrative Protective Orders.

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305. Timely written notification of the return or 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.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930.

Dated: March 12, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix

List of Issues

1. Treatment of Dofasco's bad debt allowance

2. Application of the major input rule to Dofasco's purchase of iron ore fluxed pellets from Quebec Cartier Mining (QCM)

3. Treatment of Dofasco's indirect selling expenses incurred in Canada

4. Treatment of Dofasco's inventory carrying costs incurred in Canada

5. Application of the arm's length test

6. Treatment of Dofasco's home market indirect selling expenses in the calculation of the net price used in the sales below cost test

7. Calculation of credit expense for certain of Stelco's U.S. sales

[FR Doc. E7–4942 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Notice of Amended Final Results in Accordance With Court Decision: Heavy Forged Hand Tools from the People's Republic of China

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

EFFECTIVE DATE: March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

SUMMARY: On March 10, 2007, the appeals period expired with respect to a decision of the United States Court of International Trade (''CIT''), which had sustained the final results in part, and the remand determination in part, of the Department of Commerce (''the Department'') in the administrative review of the antidumping duty orders on heavy forged hand tools (''HFHTs'') from the People's Republic of China (''PRC''), covering the period February 1, 2001, through January 31, 2002. *See Shandong Huarong Machinery Co. v. United States and Ames True Temper*, Slip Op. 07–3 (Ct. Int'l Trade 2007) (''*Shandong Huarong II*''). As there is now a final court decision, we are amending the final results of the review in this matter. We will instruct U.S. Customs and Border Protection (''CBP'') to liquidate entries subject to these amended final results.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2003, the Department published in the **Federal Register** the final results of review for the eleventh review of HFHTs from the PRC. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 53347 (September 10, 2003) (''*Final Results*''). The period of review (''POR'') was February 1, 2001, through January 31, 2002. Shandong Huarong Machinery Co. (''Huarong'') filed a summons on September 18, 2003, and filed a complaint on September 25, 2003, challenging the Department's *Final*

Results. Ames True Temper[1] (''Ames'') filed a summons on October 10, 2003, and filed a complaint on November 10, 2003, also challenging the Department's *Final Results*. The Court consolidated the two cases on December 23, 2003. On February 17, 2004, Ames filed, with a supporting brief, a motion for judgment upon the agency record. On February 18, 2004, Huarong filed, with a supporting brief, its motion for judgment upon the agency record. In their briefs, Ames and Huarong challenged several aspects of the Final Results. *See* Ames's February 17, 2004, proposed order and brief in support of motion for judgment upon the agency record (''Ames Motion for Judgment''); *see also* Huarong's February 18, 2004, proposed order and brief in support of motion for judgment upon the agency record (''Huarong Motion for Judgment''). On April 26, 2004, the Department filed its opposition to both the Huarong Motion for Judgment and the Ames Motion for Judgment. Ames filed an opposition to the Huarong Motion for Judgment on April 27, 2004. Huarong filed its reply to the Department's opposition and Ames's opposition on May 21, 2004. The Court issued a remand order on May 2, 2005.

In *Shandong Huarong Machinery Co. v. United States*, 2005 Ct. Intl. Trade LEXIS 57, Slip Op. 2005–54 (Ct. Int'l Trade, 2005) (''*Shandong Huarong I*''), the CIT remanded the underlying final results to the Department to: (1) reopen the record in order to afford Huarong a second opportunity to provide a scrap offset in which its scrap sales are allocated to the production of bars/wedges; (2) explain why its methodology of including distances greater than the distance from the nearest port to the factory, when calculating the weighted–average freight distance for multiple suppliers of one particular factor of production (''FOP''), satisfies the reasoning in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997) (''*Sigma*'') and *Lasko Metal Products Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (''*Lasko*''), or adjust its methodology; (3) explain its decision to disregard the effect of subsidies from the United States and other countries, in light of *Fuyao Glass Indus. Group Co. v. United States*, Slip Op. 2003–169 (Ct. Int'l Trade, 2003) (''*Fuyao I*'') and *Fuyao Glass Indus. Group Co. v. United States*, Slip Op. 2005–06 (Ct. Int'l Trade, 2005) (''*Fuyao II*''); (4) supply a more complete explanation to support its determination that labor costs and other factor inputs for making steel pallets are included in the cost of brokerage and handling; and (5) provide a more complete explanation to support its decision that the cost of movement from the truck to the container yard, demurrage and storage charges, and other port charges are included in the brokerage and handling cost.

The Department released the Draft Results of Redetermination Pursuant to Court Remand (''Draft Redetermination'') to Huarong and Ames for comment on October 7, 2005. The Department received timely filed comments from both Huarong and Ames on October 14, 2005, and rebuttal comments from Huarong on October 19, 2005. The Department filed its Final Results of Redetermination Pursuant to Court Remand (''Final Redetermination'') with the CIT on November 30, 2005. In the Final Redetermination the Department did the following: (1) reopened the record, and applied a steel scrap offset in its calculation of normal value to adjust for sales of steel scrap that was generated from the production of the subject bars and wedges; (2) applied the *Sigma* cap in its analysis and capped the distance for each supplier before calculating the weighted–average inland freight distance; (3) explained its decision in the *Final Results* to not exclude U.S. export data from the Indian import statistics used as the surrogate value because it would have resulted in an insignificant adjustment to normal value; (4) revised its FOP methodology to include labor costs and other factor inputs for making steel pallets in normal value; and (5) explained its reasoning for finding that movement expenses incurred at the port of export were included in the calculation of brokerage and handing expenses. The Department recalculated the antidumping duty rate applicable to Huarong, and included the changes noted above. On January 9, 2007, the CIT sustained all aspects of the remand redetermination made by the Department pursuant to the CIT's remand of the *Final Results*.

Amended Final Results of Review

The time period for appealing the CIT's final decision to the Court of Appeals for the Federal Circuit has expired and no party has appealed this decision. As there is now a final and conclusive court decision with respect to litigation for Huarong, we are amending the final results of review to reflect the findings of the remand results, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''). The amended weighted–average margin is:

Manufacturer/Exporter	Margin
Shandong Huarong Machinery Co.:	
Bars/Wedges	31.00

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates. Where the importer–specific assessment rate is above *de minimis* on an *ad valorem* basis, calculated by dividing the dumping margins found on examined subject merchandise by the estimated entered value, we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer–specific assessment rate is *de minimis* (*i.e.*, less than 0.5 percent *ad valorem*). Since the actual entered value of the merchandise was not reported to us, we have divided, where applicable, the total dumping margins (calculated as the difference between normal value and export price) for each importer by the total number of units sold to the importer. We will direct CBP to assess the resulting unit dollar amount against each unit of subject merchandise entered by the importer during the POR. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of these amended final results of review.

These amended final results of administrative review are issued and published in accordance with section 516A(c)(1) of the Act.

Dated: March 12, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–4949 Filed 3–16–07; 8:45 am]

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[1] Ames True Temper is a domestic interested party to the proceeding, and was the petitioner in the underlying review.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods from Mexico: Notice of NAFTA Panel Decision Not In Harmony With Final Results of Administrative Review

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

SUMMARY: On January 16, 2007, a Bi–National Panel (''Panel'') constituted under the North American Free Trade Agreement (''NAFTA'') affirmed the U.S. Department of Commerce's (''the Department's'') redetermination on remand of the final results of the fourth antidumping duty administrative review on oil country tubular goods from Mexico. *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Review and Determination Not to Revoke*, USA–MEX–2001–1904–05 (January 16, 2007) (''*NAFTA Final Decision*''). This case arises out of the Department's determination in the final results of administrative review covering the period August 1, 1998, to July 31, 1999. *See Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part*, 66 FR 15832 and accompanying Issues and Decision Memorandum (''*Final Results*''). Consistent with the decision of the *United States Court of Appeals for the Federal Circuit in Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department is notifying the public that the *NAFTA Final Decision* and the Notice of Final Panel Action are not in harmony with the Department's *Final Results*.

EFFECTIVE DATE: March 19, 2007

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION: For the *Final Results*, the Department reviewed sales to the United States by Hylsa S.A. de C.V. (''Hylsa'') and Tubos de Aceros de Mexico, S.A. (''TAMSA''), both Mexican producers of OCTG. Both TAMSA and Hylsa requested revocation from the Order in accordance with 19 CFR § 351.222(e)(1). The Department declined to revoke the order in part with respect to TAMSA, as it determined that TAMSA ''did not sell the subject merchandise in the United States in commercial quantities in each of the three years cited by TAMSA to support its request for revocation.'' *See Final Results*, Issues and Decision Memorandum at page 10. The Department declined to revoke the order in part with respect to Hylsa due to the finding of a dumping margin in the review. *Id.* at 23.

Subsequent to the completion of the fourth administrative review, both Hylsa and TAMSA challenged the Department's findings and requested that a Bi–National Panel review the final determination. The Panel issued a decision on January 27, 2006, upholding the Department's determinations with respect to TAMSA, but remanding the review to the Department with respect to Hylsa (to recalculate Hylsa's packing cost and cost of production on a product–specific basis). *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke*, USA–MEX–01–1904–05 (January 27, 2006) (''*NAFTA First Decision*'').

In accordance with the *NAFTA First Decision*, the Department filed its remand results on April 27, 2006. Based on the instructions of the Panel, the Department recalculated Hylsa's packing and cost of production by product costs and calculated a new antidumping duty margin for Hylsa, resulting in a margin of zero. The Department proceeded to conduct a revocation analysis, but found that Hylsa did not ship in commercial quantities to the U.S. market during the time period under consideration and found that the finding of dumping by Hylsa in the ninth administrative review was relevant to the determination whether the antidumping duty order was otherwise necessary to offset dumping. Based on these factors, the Department declined to revoke the order. *See* Redetermination on Remand, Oil Country Tubular Goods from Mexico: Fourth Administrative Review, April 27, 2006.

On August 11, 2006, the Panel again remanded the decision to the Department for further consideration. *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke*, USA–MEX–01–1904–05 (August 11, 2006) (''*NAFTA Second Decision*''). The Panel rejected the Department's reliance on the results of the ninth administrative review and also directed the Department to reexamine its revocation analysis ''in light of the issues raised by the Panel.'' *Id.* at 21. In accordance with the Second Decision, the Department reexamined Hylsa's request for revocation under 19 CFR § 351.222(e)(1) and determined that Hylsa had not made sales in commercial quantities for the three review periods under analysis. *See* Redetermination on Remand, Oil Country Tubular Goods from Mexico: Fourth Administrative Review, October 5, 2006, at 13–16.

On January 16, 2007, the Panel affirmed the Department's second remand redetermination. *See NAFTA Final Decision*. The Panel issued its Notice of Final Panel Action on February 2, 2007.

In *Timken*, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. *Timken*, 393 F.2d at 341. Because NAFTA panels step into the shoes of the courts they are replacing, they must apply the law of the national court that would otherwise review the administrative determination. Therefore, we are publishing notice that the Panel's February 2, 2007, Notice of Final Panel Action and its January 16, 2007, *NAFTA Final Decision* are not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Panel's ruling is not appealed, the Department will instruct U.S. Customs and Border Protection to revise the liquidation rates covering the subject merchandise.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: March 8, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–4912 Filed 3–16–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') published the preliminary results of administrative review of the antidumping duty order on polyethylene retail carrier bags (''PRCBs'') from the People's Republic of China (''PRC'') on September 13, 2006.[1] The period of review (''POR'') is January 26, 2004, through July 31, 2005. We invited interested parties to comment on the *Preliminary Results*. Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the *Preliminary Results*. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Matthew Quigley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4243 or (202) 482–4551, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2005, the Department initiated this administrative review with respect to Dongguan Nozawa Plastic Products Co. Ltd. and United Power Packaging Ltd. (collectively ''Nozawa''), Crown Polyethylene Products (International) Ltd. (''Crown''), Rally Plastics Co., Ltd. (''Rally''), Sea Lake Polyethylene Enterprise Ltd. (''Sea Lake''), Shanghai Glopack, Inc. (''Glopack''), High Den Enterprises Ltd. (''High Den''), and Shanghai New Ai Lian Import & Export Co., Ltd. (''New Ai Lian'').[2] On October 25, 2005, the Department amended its initiation to include Ampac Packaging (Nanjing) Co. (''Ampac''), which was inadvertently omitted from the September 28, 2005 initiation notice.[3]

On November 16, 2005, New Ai Lian withdrew its request for an administrative review. On November 22, 2005, Rally withdrew its request for an administrative review. On December 27, 2005, Sea Lake and Glopack withdrew their requests for an administrative review. On February 23, 2006, Ampac withdrew its request for an administrative review.

On September 13, 2006, the Department published the *Preliminary Results* in the **Federal Register**.[4] On October 20, 2006, High Den submitted its third supplemental questionnaire response (''3rd SQR''). The Polyethylene Retail Carrier Bags Committee (''the PRCB Committee''), Crown, High Den, and Nozawa each submitted case briefs on October 26, 2006, and rebuttal briefs on November 6, 2006.

On January 10, 2007, the Department determined that it was not practicable to complete the final results of the administrative review of PRCBs from the PRC within the 120-day period due to complex issues the parties have raised regarding the selection of appropriate financial statements for the calculation of surrogate financial ratios. Therefore, in accordance with section 751(a)(3)(A) of the Trade and Tariff Act of 1930 as amended (''the Act''), the Department extended the time period for completion of the final results until February 12, 2007.[5]

On February 2, 2007, the Department published the revised ''Expected NME Wages'' applicable to 2004 on its website. See http://ia.ita.doc.gov/wages/index.html. On February 2, 2007, the Department informed all interested parties of the revised NME wage rate applicable to this review and gave the parties the opportunity to comment on this issue prior to the final results.[6] In order to give parties an opportunity to comment on the Department's revised calculations of expected non–market economy wages, the Department extended the deadline to complete the final results to February 26, 2007.[7] We extended the deadline to complete the final results due to complex issues related to the calculation of surrogate financial ratios to March 12, 2007.[8]

No party provided comments on this issue. Thus, we calculated the surrogate value for labor using the Department's revised expected NME wage rate of $0.83 for the PRC.

We have conducted this administrative review in accordance with section 751 of the Act and 19 CFR 351.213.

Scope of the Order

The merchandise subject to this antidumping duty order is PRCBs which may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise

[1] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 54021 (September 13, 2006) (''*Preliminary Results*'').

[2] *See, Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631, 56632 (September 28, 2005) (''*Initiation Notice*''), which refers to Nozawa with the following names: Dongguan Nozawa Plastics and United Power Packaging (collectively ''Nozawa''), Dongguan Nozawa Plastics, Dongguan Nozawa Plastic Co., Ltd., Dong Guan (Dong Wan) Nozawa Plastic Co., Ltd., Dongguan Nozawa Plastic Products Co., Ltd., United Power Packaging, United Power Packaging Limited, United Power Packaging Ltd.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 61601 (October 25, 2005).

[4] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 54021 (September 13, 2006).

[5] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 1216 (January 10, 2007).

[6] *See* Memorandum from Matthew Quigley, International Trade Compliance Analyst, Through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, To The File, ''Polyethylene Retail Carrier Bags from the People's Republic of China: Request for Comments on Revised Expected Non-Market Economy Wages'' (February 2, 2007).

[7] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 7417 (February 15, 2007).

[8] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 9731 (March 5, 2007).

from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS).[9] This subheading may also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the 2004–2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China,'' (March 12, 2007) (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU'') in room B–099 in the main Department building, and is also accessible on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for Crown, High Den, and Nozawa . *See* Issues and Decision Memorandum, at Comments 1–16.

Surrogate Financial Ratios

• We excluded Arvind Chemi Synthetics Pvt., Ltd. (''Arvind'') and Jain Raffia Industries, Ltd. (''Jain Raffia'') from the companies used to calculate the surrogate financial ratios because they did not produce merchandise that was identical or comparable to the subject merchandise. *See* Comment 1 of the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the 2004–2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China,'' (February 12, 2007) (''Issues and Decision Memorandum'').

• Of the seven surrogate financial statements provided by the PRCB Committee in its October 3, 2006 surrogate value submission, we based our determination of the surrogate financial ratios on: A.P. Polyplast Private Limited (''A.P. Polyplast''), Kuloday Technopack Pvt. Ltd. (''Kuloday''), Sangeeta Poly Pack Limited (''Sangeeta''), Smitabh Intercon Ltd. (''Smitabh''), Synthetic and Tims Polymers Pvt. Ltd (''Tims''). *See* Comment 2 of the Issues and Decision Memorandum.

• We made the following changes to the calculations of the surrogate financial ratios provided in the PRCB Committee's case brief:

a. We did not allocate ''salary and wages'' between labor and SG&A based upon industry–wide information published by the Indian government. Rather, we classified ''salary and wages'' in a manner consistent with each of the surrogate company's audited financial statements.. *See* Comment 3a of the Issues and Decision Memorandum.
b. We classified ''salaries'' as SG&A and ''wages'' as direct labor for A.P. Polyplast. *See* Comment 3b of the Issues and Decision Memorandum.
c. We have classified ''consumable stores'' for A.P. Polyplast and Sangeeta as an overhead expense. *See* Comment 3c of the Issues and Decision Memorandum.
d. We have offset SG&A by the amount of short–term interest reported on Sangeeta's, Smitabh's and Tims' financial statements. *See* Comment 3g of the Issues and Decision Memorandum.
e. We decreased material cost by the amount of the increase of stock–in-process for Sangeeta, Smitabh and Tims. *See* Comment 3i of the Issues and Decision Memorandum.
f. We did not adjust the audited financial statements for unacknowledged accruals for leave encashment and employee gratuity for A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims. *See* Comment 3j of the Issues and Decision Memorandum.
g. We offset SG&A by foreign exchange gains and losses for Kuloday, Smitabh and Tims. *See* Comment 3k of the Issues and Decision Memorandum.
h. We did not adjust the audited financial statements for subsidies for Tims. See Comment 3l of the Issues and Decision Memorandum.

Expected NME Wage Rate

• We calculated the surrogate value for labor using the Department's revised expected NME wage rate of $0.83 for the PRC.

Nozawa

• We applied adverse fact available (''AFA'') to those sales of Nozawa where the corresponding control number (''CONNUM'') in the U.S. sales database was not based on the product's physical characteristics (*e.g.*, those sales lacking factors of production data) rather than to all sales whose corresponding CONNUMs matched to more than one set of physical characteristics. *See* Comment 4b of the Issues and Decision Memorandum.

• We made no inland freight adjustment to Nozawa's market–economy (''ME'') material input purchases which Nozawa reported as delivered prices. *See* Comment 7 of the Issues and Decision Memorandum.

• We adjusted U.S. prices for further manufacturing costs on a transaction–specific basis rather than a CONNUM–specific basis, thereby limiting the adjustment only to sales of product further manufactured in the United States. *See* Comment 8 of the Issues and Decision Memorandum.

• We treated Nozawa's export price (''EP'') sales as though the entered values were unknown and calculated a per unit assessment for Nozawa's EP sales rather than an *ad valorem* assessment rate. We based these changes on Nozawa's December 23, 2005, original section C questionnaire response which, in response to field 47.0, states that the entered values of Nozawa's EP sales are unknown.

Crown

• We corrected the ministerial error in the SAS program representing the value of market–economy freight for four transactions. *See* Comment 9 of the Issues and Decision Memorandum.

• We valued paper cardboard using the value of HTS number 4819.10.10. *See* Comment 12 of the Issues and Decision Memorandum.

High Den

• We recalculated High Den's antidumping duty without regard for international freight. *See* Comment 14 of the Issues and Decision Memorandum.

[9] Until July 1, 2005, these products were classifiable under HTSUS 3923.21.0090 (Sacks and bags of polymers of ethylene, other). *See Harmonized Tariff Schedule of the United States (2005)- Supplement 1 Annotated for Statistical Reporting Purposes Change Record - 17th Edition - Supplement 1*, available at http://hotdocs.usitc.gov/docs/tata/hts/bychapter/0510/0510chgs.pdf.

• We deducted from the starting price handling charges that were recorded on the commercial invoices of the U.S. sales, but were not reported in the section C databases. *See* Comment 14 of the Issues and Decision Memorandum.
• We recalculated the value of High Den's market–economy purchases of polyethylene resins, correcting the ministerial errors contained in the Excel chart. *See* Comment 15 of the Issues and Decision Memorandum.

Final Results of Review

We determine that the following dumping margins exist for the period January 26, 2004, through July 31, 2005:

Exporter/Manufacturer	Weighted–Average Margin Percentage
Crown	7.68
High Den	14.01
Nozawa	7.36
The PRC–Wide Entity	77.57

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection 15 days after the date of publication of these final results of administrative review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PRCBs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by Section 751(a)(1) of the Act: (1) As the final weight–averaged margins for Crown, High Den, and Nozawa are not less than 0.5 percent and, therefore, not *de minimis*, cash deposits of estimated antidumping duties will be required; (2) for previously reviewed or investigated companies not listed above that have a separate rate, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 77.57 percent, the current PRC–wide rate; and (4) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These cash deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 12, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Issues with Respect to Surrogate Financial Ratios

Comment 1: Exclude Arvind and Jain Raffia from the Calculation of the Surrogate Financial Ratios
Comment 2: Determine the Surrogate Financial Ratios Based on the Seven Financial Statements Provided by the PRCB Committee
Comment 3: Methodological and Clerical Errors in the Surrogate Financial Ratio Calculations Either Used by the Department or Proposed by the PRCB Committee
Comment 3a. Allocate ''Salary and Wages'' Between Direct Labor and Selling, General and Administrative (''SG&A'') Expenses Based upon Industry–Wide Information Published by the Indian Government
Comment 3b. Classify ''Salaries'' as SG&A and ''Wages'' as a Part of Direct Labor
Comment 3c. Reclassify Consumable Stores as Manufacturing Overhead (''MOH'') Rather than Direct Materials
Comment 3d. Offset the Value of Raw Material by Sales of Scrap
Comment 3e. Reclassify Depreciation as Factory Overhead
Comment 3f. Offset Direct Labor Expenses With Job Work Revenue
Comment 3g. Offset SG&A Expenses by Short–Term Interest Income
Comment 3h. Reclassify Coolie and Cartage from MOH to Labor Expense
Comment 3i. Reduce Material Costs by the Increase in Stock of Finished Goods and Scrap
Comment 3j. Adjust Audited Financial Statements for Leave Encashment and Employee Gratuity Accruals
Comment 3k. Offset Financial Expenses by Foreign Exchange Gains
Comment 3l. Adjust Energy, Overhead, SG&A and Profit by the Amount of Subsidy Receivable

Comments with Respect to Nozawa:

Comment 4a: Partial Adverse Facts Available (''AFA'') for Nozawa
Comment 4b: Should AFA Be Limited Only to Control Numbers (''CONNUMs'') Not Defined by Their Physical Characteristics or to All CONNUMs with More than One Set of Physical Characteristics?
Comment 5: Appropriate AFA Rate for Nozawa
Comment 6: Surrogate Value for Colored Ink
Comment 7: Nozawa's Further Manufacturing
Comment 8: Freight on Nozawa's Market–Economy (''ME'') Purchases

Comments with Respect to Crown:

Comment 9: International Freight
Comment 10: Negative Sales Values in the Denominator Used to Calculate Importer–Specific Assessment Rates
Comment 11: Valuation of Cardboard Paper Inserts
Comment 12: Valuation of Corrugated Cardboard Carton

Comments with Respect to High Den:

Comment 13: New Factual Information Submitted by High–Den
Comment 14: International Freight Expenses for Transaction Number 2
Comment 15: Calculation of Weighted–Average Value of High Den's ME Purchases of Polyethylene Resins
Comment 16: Valuation of High Den's Scrap Resin

[FR Doc. E7–4946 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–830]

Stainless Steel Bar from Germany: Preliminary Results of New Shipper Review

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

SUMMARY: The Department of Commerce (''the Department'') is conducting a new shipper review of the antidumping duty order on stainless steel bar from Germany manufactured by Schmiedewerke Groditz GmbH (''SWG''). The period of review (''POR'') covers March 1, 2005, through February 28, 2006. We preliminarily determine that SWG did not make sales of subject merchandise at less than normal value (''NV'') in the United States during the POR. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Damian Felton, Audrey R. Twyman, or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0133, (202) 482–3534, or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2002, the Department published an antidumping duty order on stainless steel bar from Germany. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Bar from Germany*, 67 FR 10382 (March 7, 2002) (''*Investigation Final*''). On October 10, 2003, the Department published an amended antidumping duty order on stainless steel bar from Germany. *See Notice of Amended Antidumping Duty Orders: Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom*, 68 FR 58660 (October 10, 2003).

On March 31, 2006, we received a request for a new shipper review from SWG for the period March 1, 2005, through February 28, 2006. We initiated the review on April 26, 2006. *See Notice of Initiation of New Shipper Antidumping Duty Review: Stainless Steel Bar from Germany*, 71 FR 24642 (April 26, 2006).

On June 9, 2006, and July 13, 2006, SWG responded to Section A and Sections B and C, respectively, of the antidumping questionnaire. On the extended deadline of October 11, 2006, SWG submitted their supplemental questionnaire response.

On December 4, 2006, we extended the time limit for the preliminary results of this new shipper review to no later than March 15, 2007. *See Stainless Steel Bar from Germany: Extension of Time Limit for the Preliminary Results of the New Shipper Review*, 71 FR 70363 (December 4, 2006).

Scope of the Order

For the purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar (''SSB'') includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (''the Act''), we intend to verify the information provided by SWG on April 16–18, 2007.

Bona Fide Analysis

Consistent with the Department's practice, we investigated whether the U.S. transaction reported by SWG during the POR was a *bona fide* sale. Among the factors examined was the relationship between SWG and its reported U.S. customer. Petitioners[1] contended that SWG and its customer were affiliated by virtue of a principal/agent relationship. Based on our investigation, we preliminarily determine that SWG and its U.S. customer were not affiliated and that SWG's sale was made on a *bona fide* basis. For a complete discussion of our analysis, see the Department's memorandum to the file entitled, ''*Bona Fide* Nature of Schmiedewerke Groditz GmbH's Sales in the New Shipper Review for Stainless Steel Bar from Germany,'' dated March 12, 2007, on file in room B–099 of the main Department of Commerce building.

Comparisons to Normal Value

To determine whether sales of subject merchandise to the United States by SWG were made at less than NV, we compared the U.S. export price (''EP'') to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted–average prices for NV and compared these to the prices of individual EP transactions. We have used the invoice date as the date of sale in both markets. We describe below our calculation of NV and EP.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products described by the Scope of the Order section, above, which were produced and sold by SWG in the home market, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. We made comparisons using the following five model match characteristics: (1) Finish; (2) Grade; (3) Remelting; (4) Final Finishing; (5) Shape; and (6) Size.

Export Price

In accordance with section 772(a) of the Act, EP is defined as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an

[1] Petitioners are Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., and Electralloy Corporation.

unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price (''CEP'') is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For SWG's sales to the United States, we used EP in accordance with section 772(a) of the Act because its merchandise was sold directly to the first unaffiliated purchaser prior to importation, and CEP was not otherwise warranted based on the facts of record.

We calculated EP based on the prices charged to the first unaffiliated customer in the United States. We based EP on the packed FOB port prices to the first unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including domestic inland freight, domestic inland insurance, international freight, U.S. customs duty, and U.S. brokerage and handling.

Normal Value

A. Viability

In order to determine whether there is sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales of subject merchandise during the POR), we compared SWG's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. *See* section 773(a)(1)(C)(iii) of the Act. Based on SWG's reported home market and U.S. sales quantities, we determine that the volume of aggregate home market sales during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales of subject merchandise during the POR. Accordingly, we find that SWG had a viable home market. Therefore, we based NV on home market sales to unaffiliated purchasers made in the usual quantities and in the ordinary course of trade.

B. Price–to-Price Comparisons

We compared U.S. sales with contemporaneous sales of the foreign like product in Germany. As noted above, we selected the comparison sales based on the following criteria: (1) Finish; (2) Grade; (3) Remelting; (4) Final Finishing; (5) Shape; and (6) Size.

In calculating the net unit price, we used the reported gross unit price. We made adjustments for differences in packing costs between the two markets and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We deducted early payment discounts and movement expenses (inland freight and inland insurance). We adjusted for differences in the circumstances of sale (''COS'') pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Home market direct selling expenses consisted of imputed credit, administrative charges associated with sales, and financing. U.S. direct selling expenses consisted of imputed credit, bank charges, and administrative charges associated with sales, and financing. Finally, we made adjustments, where appropriate, for physical differences between the U.S. models and the home market models to which they were being compared.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (''LOT'') as EP or CEP. The NV LOT is that of the starting–price sales in the home market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative expenses and profit. For CEP it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision). *See Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

In implementing these principles in this review, we obtained information from SWG about the marketing stages involved in its U.S. and home market sales, including a description of its selling activities in the respective markets. Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports differences in levels of trade, the functions and activities should be dissimilar.

SWG reported one channel of distribution and one LOT in the home market contending that all home market sales were to end users. *See* SWG's June 9, 2006, Section A submission at A–12. SWG further contends it provided substantially the same level of customer support on its U.S. sale as it provided on its home market sales to end users. We examined the selling activities reported by SWG and determined that they are identical with respect to sales and marketing, inventory maintenance, warranties, and freight and delivery. For example, SWG did not incur freight and delivery or warehousing expenses in either market, and SWG performed similar activities with respect to sales and marketing and warranties. *See* SWG's June 9, 2006, Section A submission at A–13 and Exhibit A–5. The Department has determined that we will find sales to be at the same LOT when the selling functions performed for each customer class are sufficiently similar. *See* 19 CFR 351.412(c)(2). We find SWG performed virtually the same level of customer support services on its U.S. EP sale as it did on its home market sales.

Therefore, based on our analysis of the selling functions performed on SWG's EP sale in the United States, and its sales in the home market, we determine that the EP and the starting price of home market sales represent the same stage in the marketing process, and are thus at the same LOT. Accordingly, we preliminarily find that no level of trade adjustment is appropriate for SWG.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review we preliminarily find that a weighted–average dumping margin of 0.00 percent exists for SWG for the period March 1, 2005, through February 28, 2006.

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d).

Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of new shipper review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 5 days after the date of submission of case briefs and written comments. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this new shipper review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 90 days of publication of these preliminary results.

Assessment Rates

Upon issuance of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for the U.S. sale made by the respondent for which they have reported the importer of record and entered value, we have calculated an importer–specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the U.S. sale. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated an importer–specific *ad valorem* rate based on the reported entered value. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by reviewed companies for which these companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit rate will be effective upon publication of the final results of this new shipper review for shipments of stainless steel bar from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act. For subject merchandise produced and exported by SWG, the cash deposit rate will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis, the cash deposit rate will be zero. This cash deposit requirement, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: March 12, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–4944 Filed 3–16–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Countervailing Duty Changed Circumstances Review

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

SUMMARY: On December 19, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of the changed circumstances review of the countervailing duty (''CVD'') order on stainless steel sheet and strip in coils (''SSSS'') from the Republic of Korea (''Korea''). *See Preliminary Results of Countervailing Duty Changed Circumstances Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 71 FR 75937 (December 19, 2006) (''*Preliminary Results*''). The Department preliminarily determined that: (1) Hyundai Steel Company (''Hyundai'') is the successor–in-interest to INI Steel Company (''INI''), formerly Inchon Iron and Steel Co., Ltd.; and (2) upon publication of these final results of this review, INI's current CVD cash deposit rate shall be applied to entries of subject merchandise made by Hyundai. We did not receive any comments on our preliminary results and have made no revisions to those results.

EFFECTIVE DATE: March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0395.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific

dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[1], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain additional specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is excluded from the scope of this order. Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

[1] Due to changes to the HTSUS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.

Final Results of Review

As noted above, the Department received no comments concerning the *Preliminary Results*. Therefore, consistent with the *Preliminary Results*, we continue to find that Hyundai is the successor–in-interest to INI and the current cash deposit rate applicable to INI shall be applicable to entries of subject merchandise made by Hyundai, entered on or after the publication date of the final results of this changed circumstances review. As there have been no changes to or comments on the *Preliminary Results*, a decision memorandum was not required and, therefore, none is attached to this **Federal Register** notice. For further details of the issues included in this proceeding, see the *Preliminary Results*.

[5] This list of uses is illustrative and provided for descriptive purposes only.

Cash Deposit Rate

The cash deposit rate shall remain in effect until publication of the final results of the next administrative review in which Hyundai participates.

Return of Destruction of Proprietary Information

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 CFR 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.

We are issuing and publishing these results in accordance with sections 751(b)(1) and 777(i)(1) of the Act.

Dated: March 12, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–4943 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 0612243002–7057–01]

Amendment to the Required Minimum Performance Ratings for Optional Third-Year Funding for the Miami/Ft. Lauderdale, Oklahoma City and Honolulu Minority Business Enterprise Centers

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: On August 17, 2004, the Minority Business Development Agency (MBDA) published a **Federal Register** notice soliciting competitive applications for operators of the Miami/Ft. Lauderdale, Oklahoma City and Honolulu Minority Business Enterprise Centers (MBECs) (formerly Minority Business Development Centers). No other MBECs were included as part of this competitive solicitation. The August 17, 2004 notice provides for a two-year award period, with an optional third-year award period available at the sole discretion of MBDA and the Department of Commerce. The notice also provides that only those MBECs achieving ''outstanding'' performance ratings for each of the two prior program years are eligible to receive funding for the optional third-year of the award.

This notice amends the August 17, 2004 notice to change the minimum required performance rating for the optional third-year award period from ''outstanding'' to ''at least commendable'' for the first program year. The ''outstanding'' performance requirement for the second program year continues to apply. MBDA is making this amendment to allow the operators of these three MBECs to be eligible for a third and final year of continuation funding if they achieve at least a ''commendable'' performance rating for first program year and an ''outstanding'' performance rating for the second program year.

DATES: The optional third-year award period, if approved by the Department of Commerce Grants Officer, will be effective as of January 1, 2007 and will continue through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Efrain Gonzalez, Program Manager, Minority Business Development Agency, Office of Business Development, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Mr. Gonzalez may be reached by telephone at (202) 482–1940 and by e-mail at *egonzalez@mbda.gov*.

SUPPLEMENTARY INFORMATION: On August 17, 2004, MBDA published a **Federal Register** notice (69 FR 51064) soliciting competitive applications for operators of the Miami/Ft. Lauderdale, Oklahoma City and Honolulu MBECs, which cover the metropolitan statistical areas of Miami/Ft. Lauderdale, Florida, the State of Oklahoma and the Island of Hawaii, respectively. No other MBECs were included as part of this competitive solicitation. The August 17, 2004 notice provides for a two-year award period (January 1, 2005–December 31, 2006), with a third-year option (January 1, 2007–December 31, 2007) available at the sole discretion of MBDA and the Department of Commerce. The August 17, 2004 notice further provides that only those MBECs achieving ''outstanding'' performance ratings for each of the two prior program years are eligible to receive funding for the optional third-year of the award. Pursuant to the August 17, 2004 notice, two-year awards were made to M. Gill and Associates (Miami/Ft. Lauderdale MBEC), Langston University (Oklahoma City MBEC) and the University of Hawaii (Honolulu MBEC) for the award period January 1, 2005–December 31, 2006.

MBDA has determined that it is necessary to amend the August 17, 2004 notice to change the minimum required

performance rating for optional third-year funding from ''outstanding'' to ''at least commendable'' (as defined in the FFO accompanying the original notice) for the first program year. All other provisions of the original August 17, 2004 notice remain the same.

Limitation of Liability

Publication of this announcement does not oblige the Department of Commerce or MBDA to award a third-year extension to any of the MBEC operators or projects identified in this notice or to obligate any available funds for such purpose.

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the December 30, 2004 **Federal Register** notice (69 FR 78389) are applicable to this notice.

Executive Order 12866

This notice has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Dated: March 13, 2007.

Ronald Marin,

Financial Management Officer, Minority Business Development Agency.

[FR Doc. E7–4902 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022207B]

National Standard 1 Guidelines; Scoping Process

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

ACTION: Notification of additional scoping meetings.

SUMMARY: NMFS announces several scoping meetings for the environmental impact statement for implementation of annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation Reauthorization Act of 2006 (MSRA). Such guidance would be added to the National Standard 1 Guidelines. These scoping meetings are in addition to those that were announced and published in a **Federal Register** notice on February 28, 2007. Note that the date of the scoping meeting to be held at the Gulf of Mexico Fishery Management Council meeting has been changed from March 29, 2007, to March 27, 2007.

DATES: Dates and locations of scoping meeting are listed below under **SUPPLEMENTARY INFORMATION**. Date and times are subject to Regional Fishery Management Council agenda changes during the week of the meeting. Written comments must be received by April 17, 2007.

ADDRESSES: You may submit comments on issues and alternatives, by any of the following methods:

- E-mail: *annual.catchlimitDEIS@noaa.gov*. Include ''Scoping comments on annual catch limit DEIS'' in subject line of the message.
- Fax: 301–713–1193
- Mail: Mark Millikin; National Marine Fisheries Service, NOAA; 1315 East-West Highway; Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Millikin; National Marine Fisheries Service, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index*.

Background

The MSRA, signed into law by President Bush on January 12, 2007, set forth new requirements related to overfishing, including new ACL and AM provisions for federally managed fisheries in the U.S. exclusive economic zone. NMFS initiated action through a notice of intent (NOI) to develop guidance related to these new provisions, specifically requirements set forth under sections 103(b)(1) and (c)(3), 104(a)(10), (b), and (c) of the MSRA. NMFS intends to revise the National Standard 1 (NS1) Guidelines, 50 CFR 600.310, through a proposed and final rule to incorporate guidance of these MSRA sections before the end of 2007. NMFS is seeking input on ACLs and AMs and related matters in the NS1 guidelines. More background related to this action is contained in the NOI published on February 14, 2007 (72 FR 7016), and is not repeated here.

Dates and Locations of Meetings

Scoping meetings will be held at the following locations:

Gulf of Mexico Fishery Management Council Meeting, March 27, 2007, 6:30 p.m. to 7:30 p.m. at the Embassy Suites Hotel, Destin, FL 32550.

North Pacific Fishery Management Council Meeting, March 28, 2007, morning session, at the Anchorage Hilton Hotel, Anchorage, AK 99501.

Pacific Fishery Management Council Meeting, April 3, 2007, afternoon session at the Seattle Airport Marriott Hotel, Seattle, WA 98188.

New England Fishery Management Council, April 10, 2007, 1:30 p.m. to 3 p.m. at the Mystic Hilton, Mystic, CT 06355.

Mid-Atlantic Fishery Management Council, April 17, 2007, 7 p.m. to 8:30 p.m. at the Princess Royale, Ocean City, MD 21842.

Special Accommodations

The public meetings listed in this notice will be accessible to people with physical disabilities. Requests for sign language interpretation and other auxiliary aids should be directed to Jennifer Ise (301–713–2341), at least 5 days before the scheduled session.

Dated: March 13, 2007.

James P. Burgess,

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

[FR Doc. E7–4955 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031207D]

Pacific Halibut Fishery; Guideline Harvest Levels for the Guided Recreational Halibut Fishery

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

ACTION: Notice of guideline harvest level.

SUMMARY: NMFS provides notice of the guideline harvest levels (GHL) for the guided sport halibut fishery (charter fishery) in the International Pacific Halibut Commission (IPHC) regulatory areas 2C and 3A. The GHLs provide a benchmark harvest level for participants in the charter fishery. This notice is necessary to meet the management and regulatory requirements for the GHLs and to inform the public about the 2007 GHLs for the charter fishery.

DATES: The GHLs are effective beginning 1200 h, Alaska local time (A.l.t.), February 1, 2007, and will close at 2400 h, A.l.t., December 31, 2007. This period is specified by the IPHC as the sport fishing season in all waters of Alaska.

FOR FURTHER INFORMATION CONTACT: Jason Gasper, 907–586–7228, or email at jason.gasper@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS implemented a final rule to establish GHLs in IPHC regulatory areas 2C and 3A for the harvest of Pacific halibut (Hippoglosses stenolepis) by the charter fishery on August 8, 2003 (68 FR 47256). The GHLs are intended to serve as a benchmark harvest level for participants in the charter fishery.

This announcement is consistent with 50 CFR 300.65(c)(2), which requires that GHLs for IPHC regulatory areas 2C and 3A be specified by NMFS and announced by publication in the **Federal Register** no later than 30 days after receiving information from the IPHC. The IPHC annually establishes the constant exploitation yield (CEY) for halibut in IPHC regulatory areas 2C and 3A. Regulations at § 300.65(c)(1) establish the GHLs based on the CEY that is established annually by the IPHC. The CEY established by the IPHC for 2007 in Areas 2C and 3A result in GHLs of 1,432,000 lb (649.5 t), and 3,650,000 lb (1,655.6 t), respectively.

This notice does not require any regulatory action by NMFS and is intended to serve as a notice of the GHLs in Areas 2C and 3A for 2007. If a GHL is exceeded in 2007, NMFS will notify the North Pacific Fishery Management Council (Council) in writing within 30 days of receipt of that information. The Council is not required to take action, but may recommend additional management measures after receiving notification that a GHL has been exceeded.

Classification

This notice does not require any additional regulatory action by NMFS and does not impose any additional restrictions on harvests by the charter fishery.

If a GHL is exceeded in any year, the Council would be notified, but would not be required to take action. This process of notification is intended to provide the Council with information about the level of Pacific halibut harvest by the charter fishery in a given year and could prompt future action.

Authority: 16 U.S.C. 773 *et seq.*

Dated: March 12, 2007.

Alan D. Risenhoover,

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

[FR Doc. E7–4887 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030107E]

Fisheries off West Coast States and in the Western Pacific; Overfishing Determination of Petrale Sole

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

ACTION: Notification of determination of overfishing.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that overfishing is occurring in fisheries for petrale sole. NMFS notified the Pacific Regional Fishery Management Council (Pacific Council) of its determination by letter. The Pacific Council is required to take action within 1 year following NMFS notification that overfishing is occurring or a stock is approaching overfishing, a stock is overfished or approaching an overfished condition, or existing remedial action taken to end overfishing or rebuild an overfished stock has not resulted in adequate progress.

FOR FURTHER INFORMATION CONTACT: Debra Lambert, telephone: (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS sends written notification to fishery management councils when overfishing is occurring or a stock is approaching overfishing; a stock is overfished or approaching an overfished condition, or existing action taken to end previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress. On February 13, 2007, the NMFS Northwest Regional Administrator sent a letter, notifying the Pacific Council that petrale sole was subject to overfishing in 2005. The estimated catch of petrale sole in 2005 was 2,766 mt, 0.14 percent above the 2005 petrale sole Acceptable Biological Catch (ABC) of 2,762 mt.

A copy of the notification letter sent to the Pacific Council for the aforementioned determination is available at *http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm*.

Within 1 year of a notification under Magnuson-Stevens Act sections 304(e)(2) or (e)(7), the respective Council must take remedial action in response to the notification, to end overfishing if overfishing is occurring; rebuild an overfished stock or stock complex to the abundance that can produce maximum sustainable yield within an appropriate time frame; prevent overfishing from occurring if a stock is approaching overfishing; and/or prevent a stock from becoming overfished if it is approaching an overfished condition (see implementing regulations at 50 CFR 600.310(e)(3)). Such action must be submitted to NMFS within 1 year of notification and may be in the form of a new fishery management plan (FMP), an FMP amendment, or proposed regulations. However, preliminary estimates from 2006 indicate that the 2006 petrale catch was below that species'ABC. This lower catch was likely due to the Pacific Council having introduced winter trip limits for petrale sole via inseason recommendations from its November 2005 meeting (70 FR 72385, December 5, 2005). The 2007–2008 groundfish trip limits, established through notice and comment rulemaking, also include limits for petrale sole that were designed to keep catch within the appropriate level (71 FR 78638,

December 29, 2006). Thus, NMFS believes that the Council has taken the necessary steps under Magnuson-Stevens Act section 304(e)(3)(A) to end overfishing on petrale sole.

Dated: March 12, 2007.

Alan D. Risenhoover,

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

[FR Doc. E7–4954 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–7056–49; I.D. 030607G]

Availability of Grant Funds for Fiscal Year 2007

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

ACTION: Notice; reopening of competition solicitation.

SUMMARY: The National Oceanic and Atmospheric Administration, National Marine Fisheries Service publishes this notice to reopen the competitive solicitation for the Chesapeake Bay Cooperative Science Program which was originally published in the **Federal Register** on December 27, 2006. The solicitation period was reopened to provide the public more time to submit proposals.

DATES: The new deadline for the receipt of proposals is 5 p.m. Eastern Time on March 26, 2007 for both electronic and paper applications.

ADDRESSES: The address for submitting Proposals electronically is: *http://www.grants.gov/*. (Electronic submission is strongly encouraged). Paper submissions should be sent to the NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107, Annapolis, MD 21403.

FOR FURTHER INFORMATION CONTACT: Derek Orner, 410–267–5676, *derek.orner@noaa.gov*; or Peter Bergstrom, 410–267–5665, *peter.bergstrom@noaa.gov*.

SUPPLEMENTARY INFORMATION: This program was originally solicited in the **Federal Register** on December 27, 2006 (71 FR 77726), as part of the December, 2006 NOAA Omnibus

solicitation. The original deadline for receipt of proposals was 5 p.m., EST, on March 12, 2007. NOAA reopens the solicitation period to provide the public more time to submit proposals as severe weather conditions adversely affected the ability of potential applicants to submit applications. All applications that are submitted between March 12, 2007, and March 19, 2007 will be considered timely. All other requirements published in the December 27, 2006 solicitation notice are applicable and remain the same.

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2007 funds. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, **Federal Register**, Vol. 67, No. 210, pp. 66177–66178, for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public

property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 13, 2007.

Samuel D. Rauch III,

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

[FR Doc. E7–4883 Filed 3–16–07; 8:45 am]

BILLING CODE 3520–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022807G]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches from Kodiak, AK

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice; issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that a 1-year letter of authorization (LOA) has been issued to the Alaska Aerospace Development Corporation (AADC), to take Steller sea lions (Eumetopias jubatus) and Pacific harbor seals (*Phoca vitulina richardii*) incidental to rocket launches from the Kodiac Launch Complex (KLC).

DATES: Effective March 12, 2007, through March 11, 2008.

ADDRESSES: The LOA and supporting documentation are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, or Brad Smith, NMFS, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the National Marine Fisheries Service (NMFS) to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of Steller sea lions (SSLs) and harbor seals incidental to rocket launches at KLC, became effective on February 27, 2006 (71 FR 4297), and remain in effect until February 28, 2011. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during rocket launches at KLC.

Summary of Request

NMFS received a request for an LOA pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals incidental to rocket launches at KLC.

Summary of Activity and Monitoring Under the Current LOA

In compliance with the 2006 LOA, AADC submitted an annual report on the rocket launches at KLC. A summary of that report (R&M Consultants, 2006) follows.

One launch was conducted at KLC between February 27, 2006, and February 28, 2007. This was a monitored launch of an Interceptor FTG-02 on September 1, 2006, at 9:22 am. Aerial surveys to document abundance of SSLs and harbor seals were flown 3 days prior to, immediately after, and 2 days post launch. Video monitoring equipment and a sound level meter were deployed on the northeast end of Ugak Island, 4.5 miles (7.2 km) from the launch site, overlooking East Ugak Rock, and another sound level meter was deployed at Narrow Cape, 0.9 miles from the launch site. No SSLs were observed at the traditional haul-out site on the northern tip of Ugak Island during pre-launch surveys; therefore, no monitoring at that site was conducted. As an alternative, the northeast end of Ugak Island was chosen as a monitoring location as two to five SSLs we observed there during pre-launch aerial survey flights.

Sound level monitoring equipment at the SSL haulout site registered noise above general ambient levels for one minute eight seconds. Noise levels peaked at 105.6 dBC. During pre-launch aerial surveys, 2 to 4 sea lions were observed hauled out at this site and one was seen swimming in the area on 2 of the 3 days. Video monitoring showed two SSLs resting on East Ugak Rock during the launch. No change in SSL activity was observed during the ignition, during the peak noise levels that followed the launch, or for the remaining duration of the video monitoring (4 hrs 7 min). Post launch surveys documented 1-2 SSLs using this haul-out site.

Video monitoring for harbor seal reaction during the launch was not required in conjunction with SSL response monitoring. Abundance monitoring via aerial surveys conducted pre and post launch around Ugak Island revealed that harbor seals concentrated at two haul-out sites. Average haul-out attendance increased on days following the launch at these two locations, Northeast and Southeast Ugak Island. Pre launch surveys showed 876 and 1154, respectively, seals hauled-out while post launch surveys revealed 1207 and 1497 seals at these locations. Therefore, NMFS believes that harbor seal attendance at these haul-out sites was not affected negatively by this launch.

In summary, no impacts to any marine mammals were detected during the launches. There was no evidence of injury or mortality as a result of the launches and numbers of hauled out animals were similar to or higher than

pre-launch levels within 1 day of the launch.

Authorization

Accordingly, NMFS has issued an LOA to AADC authorizing takes of marine mammals incidental to rocket launches at the KLC. Issuance of this LOA is based on findings, described in the preamble to the final rule (71 FR 4297, January 26, 2006) and supported by information contained in AADC's required 2006 annual report, that the activities described under this LOA will result in the take of small numbers of marine mammals, have a negligible impact on marine mammal stocks, and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses.

Dated: March 12, 2007.

James H. Lecky,

Director, Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–4885 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021207D]

Notice of Availability of Final Stock Assessment Reports

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

ACTION: Notice of availability; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). These reports for 2006 are now final and available to the public.

ADDRESSES: Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: *http://www.nmfs.noaa.gov/pr/sars/*. You also may send requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, 7600 Sand Point Way, BIN 15700, Seattle, WA 98115.

Copies of the Atlantic Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, e-mail *Tom.Eagle@noaa.gov*; Robyn Angliss, Alaska Fisheries Science Center, 206–526–4032, email *Robyn.Angliss@noaa.gov*; Gordon Waring, Northeast Fisheries Science Center, email *Gordon.Waring@noaa.gov*; or Jim Carretta, Southwest Fisheries Science Center, 858–546–7171, email *Jim.Carretta @noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal level (PBR), estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

As required by the MMPA, NMFS updated SARs for 2006, and the revised reports were made available for public review and comment (71 FR 42815, July 28, 2006). The MMPA also specifies that the comment period on draft SARs must be 90 days. NMFS received comments on the draft SARs and has revised the reports as necessary. The final reports for 2006 are available.

Comments and Responses

At the end of the comment period on October 26, 2005 NMFS received letters from three organizations (Marine Mammal Commission (Commission), Hawaii Longline Association (HLA), and the Humane Society of the United States) and two individuals. Each letter contained more than one comment.

Unless otherwise noted, comments suggesting editorial or minor clarifying changes were included in the reports. Such editorial comments and responses to them are not included in the summary of comments and responses below. Other comments recommended development of Take Reduction Plans or to initiate or repeat large data collection efforts, such as abundance surveys or observer programs. Comments on the need to develop additional Take Reduction Plans are not related to the SARs; therefore, these comments are not included below. Comments recommending additional data collection (e.g., additional abundance surveys or observer programs) have been addressed in recent years. NMFS' resources for surveys or observer programs are fully utilized, and no new large surveys or observer programs may be initiated until additional resources are available or ongoing monitoring or conservation efforts can be terminated. Such comments on the 2006 SARs and responses to them may not be included in the summary below because the responses have not changed. Uncertainties in each of the reports (e.g., age of estimates, large coefficients of variation (CVs), or lack of available data) in each of the affected SARs are clearly indicated.

In some cases, NMFS' responses state that comments would be considered for, or incorporated into, future revisions of the SAR rather than being incorporated into the final 2006 SARs. The delay is due to review of the reports by the regional SRGs. NMFS provides preliminary copies of updated SARs to SRGs prior to release for public review and comment. If a comment on the draft SAR results in a substantive change to the SAR, NMFS may discuss the comment and prospective change with the SRG at its next meeting prior to incorporating the change. Some new events that may affect marine mammal status or take (e.g., the establishment of the Northwest Hawaiian Islands National Monument in 2006) are not included in the 2006 SARs because these reports were initially drafted in the fall of 2005 to begin the internal and SRG review prior to their availability for public review and comment. Such new events would be incorporated in the

next revision of the SARs. In the example of the Northwest Hawaiian Islands National Monument, the draft 2007 SAR for Hawaiian monk seals will include reference to its establishment and the subsequent implications for monk seal status.

Comments on National Issues

Comment 1: The Commission recommended that NMFS work with Federal and state fisheries management agencies and the fishing industry to develop a fair and sustainable funding strategy to support effective observer programs for collecting information on incidental mortality and serious injury.

Response: NMFS established a National Observer Program in 1999 to combine program-specific observer effort for efficiency and to promote sustainable funding for a comprehensive marine resource observer program. The National Observer Program has been working with fishery management agencies and the fishing industry to meet these objectives and will continue to do so. The National Observer Program, in coordination with all six NMFS regions, has initiated development of a National Bycatch Report to compile species- and fishery-specific bycatch estimates for fish, marine mammals, sea turtles, and sea birds. This initiative will incorporate the development of fishery improvement plans to improve the collection of bycatch data and bycatch estimation methodologies. These improvement plans will also provide a comprehensive assessment of resources required to improve bycatch in U.S. commercial fisheries.

Comment 2: The Commission recommended that NMFS adjust its guidelines for preparing stock assessment reports to ensure consistent methods for identifying strategic stocks.

Response: NMFS revised the guidelines in 2005 to promote such consistency. In the most recent meetings of the three regional SRGs, each SRG recommended a joint meeting to evaluate various aspects of the PBR/SAR process. If the results of the joint SRG meeting suggest another review and revision of guidelines for preparing SARs, NMFS would initiate the process to review and revise the guidelines.

Comment 3: Although SARs generally report non-fishery-related mortality from anthropogenic sources, one source, scientific research on marine mammals, is generally not addressed. SARs should include mortality that is attributable to scientific research.

Response: Research-related mortality and serious injury is included in the 2007 draft reports in the Alaska and Atlantic regions. The information will be made available to the authors of Pacific SARs beginning with the 2008 reports. Although such reporting is necessary to be fully consistent with the provisions of MMPA section 117, NMFS notes that such mortality or serious injury is rare and is not likely to alter the status of any stock.

Comment 4: A number of SARs rely on unpublished information. The guidelines for SARs stipulate that literature used for key aspects of stock assessment should be peer reviewed. Efforts should be made to assure that information reported in SARs comes from published sources and/or to assure that NMFS employees providing this information incorporate it in published reports in the future.

Response: This comment misinterprets the guidelines for preparing SARs. The guidelines, which when published in 1995 and revised in 1997, were parts of larger reports of workshops, do not include statements regarding standards for review of information in SARs. Wade and Angliss (1977, Guidelines for Assessing Marine Mammal Stocks: Report of the GAMMS Workshop April 3–5, 1996, Seattle, Washington, NOAA Tech. Mem. NMFS-OPR–12.) included a summary of discussions among NMFS staff, members of SRGs, and representatives of the Commission which noted general agreement that peer-reviewed information was the most reliable and encouraged the use of peer review when possible. However, there is sometimes a trade-off between peer review and freshness of information, and the MMPA requires SARs to be based upon the best available scientific information. Consequently, each new estimate or other key element of a SAR is not necessarily subjected to peer review; however, the methods and analyses that produce the estimates used in SARs should be published in peer-reviewed journals or in a similar forum that is most appropriate, such as a NOAA Technical Memorandum. Merrick (1999, Report of the Joint Scientific Review Group Workshop, April 13–14, 1999, Seattle, Washington, NOAA Tech. Mem. NMFS-NE–154) summarizes additional discussion and agreements on information used in SARs and was in general agreement with Wade and Angliss (1977).

Comments on Alaska Regional Reports

Comment 5: One comment noted that Steller sea lion abundance and trends are estimated from research occurring at one rookery.

Response: Estimates of Steller sea lion abundance trends result from surveys of many haulouts and rookeries throughout the range of the population. For specific lists of which haulouts and rookeries are surveyed, the SAR refers to published reports, such as Fritz and Stinchcomb, 2005 and Loughlin and York, 2000.

Comment 6: Use of data acquired through personal communication is discouraged in the GAMMS report, and major issues of management and policy should not be made on the basis of these data. For example, a new boundary for the Western stock of Steller sea lions has been proposed and the citation for active Asian haulouts and rookeries that would fall under a new stock boundary is attributed to an unpublished or reviewed personal communication.

Response: NMFS makes every effort to rely on information in peer-reviewed publications and to use unpublished data or ''personal communication'' as little as possible. Further, NMFS replaces ''unpublished data'' or ''personnel communication'' citations with peer reviewed publications as soon as the more substantiated reference is available. However, when peer-reviewed data are unavailable and will not be available in the immediate future, the best scientific information available may sometimes come from personal communication or another non-reviewed source. With regard to changes in the structure of the western Steller sea lion stock, new publications occurred between the draft and final SAR which indicated lack of clarity about the proposed stock boundary between the western stock and a hypothetical Asian stock. The final SAR describes the different analyses and retains the original stock identification.

Comment 7: One commenter objected to the removal of fishery self-report information from the commercial fisheries mortalities sections of the SARs. The reports are negatively biased but are as reliable as stranding data which have been retained in the SARs. Fishery self-reports should remain in the SARs.

Response: Fishery self-reports are not as reliable as stranding data. Stranding reports are reviewed and assessed to promote correct species identification. Humpback whale stranding reports are reviewed by both agency staff and members of the Alaska SRG prior to inclusion in the SARs. Because the number of self-reports submitted annually has declined drastically, most self-reported mortalities are more than 10 years old. Based on the unreliability and age of available self-report data, NMFS does not include these data in the body of the SARs. However, the data will continue to be reported in an

appendix to the SARs as additional information.

Comment 8: In other regions, stocks that are declining set the PBR as ''undetermined'' (e.g., Hawaiian monk seals) or as zero (North Atlantic right whales), because the stocks do not meet the assumptions inherent to calculating a PBR. In the Alaska region several stocks are declining, including the western stock of Steller sea lions and northern fur seals; therefore, it would be precautionary to adopt the same practice as other regions (note that the Alaska region has set the Cook Inlet beluga whale PBR as ''undetermined''). This rationale should be used for all stocks in which declines are apparent, even if the declines are not a result of anthropogenic mortality.

Response: In the Alaska SARs, a case-by-case approach is taken when assessing whether the PBR should be set to ''undetermined'' for a declining stock. For the Cook Inlet beluga stock, setting the PBR to ''undetermined'' was appropriate because the stock has been at a critically low abundance (2005 abundance of 278) for several years and the stock shows no signs of recovery, even after initiating very conservative management of the subsistence harvest, which was the largest source of human-related mortality.

The western stock of Steller sea lions is currently at a low level relative to the historical size of the population, but the number of animals (47,885) is substantially larger than the abundance of the Cook Inlet beluga whale stock, and the ability of the population to sustain some level of human-related impact is larger. Further, it is no longer clear that the population remains in decline. While the population was clearly in decline until 2000, recent estimates in 2002 and 2004 may indicate that the population may have stabilized. Thus, it is not necessary to set the PBR level as ''undetermined'' as a precautionary management step.

The northern fur seal population is currently declining, but is very large. Human-related mortality or serious injury does not contribute substantially to the decline. However, northern fur seals, with an abundance estimate of 721,935, are one of the most abundant marine mammals in Alaska. Thus, it is not necessary to set the PBR level as ''undetermined'' as a precautionary management step.

Comment 9: Previous stock assessments have provided point estimates for native subsistence harvest, as well as upper and lower estimates based on bounds of confidence. Given the low precision of these estimates, this information should be included so that reviewers may gauge the possible range of impacts.

Response: Several years ago, NMFS received a recommendation to remove the upper and lower estimates for the subsistence harvest of all stocks because, for most stocks, this information is not available. For the stocks where this information is available, the reliability of the information is unknown. In all cases, the primary literature where this information can be found is cited. More detailed information is contained in the references cited in the SARs.

Comment 10: Data provided in the draft recovery plan for Steller sea lions indicated that the trend in pup counts for the Western stock was not uniform and that declines were still occurring at some key trend sites. This information should be included in this stock assessment.

Response: Data from the draft recovery plan will be included in the draft 2007 Steller sea lion SARs.

Comment 11: The slightly upward trend in subsistence harvest of Western Steller sea lions, which is approaching PBR and may exceed it, given the likely margin of error, is of concern.

Response: NMFS agrees that mortality and serious injury of Steller sea lions approaching PBR are of concern and continues a dialog with Alaska Native subsistence users through the co-management process.

Comment 12: One commenter objected to the elimination of age and sex of sea lions killed in native subsistence hunts. It remains unclear why the NMFS proposed to delete this information. The MMPA provides for the SRG to advise on issues of uncertainty relative to mortality of animals in certain age and sex classes. Having this information in the SARs makes the discussion easier and more transparent.

Response: NMFS eliminated this information upon consultation with the Alaska SRG because sex and age class information was of little value without modeling to put the information into the context of the stock's population dynamics. The additional information is available in the references cited in the SAR.

Comment 13: One commenter objected to a clause in the SAR for the Western stock of Steller sea lions (" if the population is still declining''). The statement is unnecessary and provides a misleading impression of the stock's status. NMFS should be precautionary in its assessments.

Response: Given the recent counts of Steller sea lions, it is no longer clear that the abundance is still in decline. The statement ''if the population is still declining'' is an accurate reflection of the current uncertainty in the trend.

Comment 14: Because the population trajectory for the Eastern stock of Steller sea lions differs in a portion of its range (e.g., Central California), NMFS may wish to consider viewing management actions for portions of this stock rather than basing them on the trajectory for the stock as a whole.

Response: Separating the central California portion of the eastern stock of Steller sea lions was discussed and ultimately rejected by the Steller sea lion recovery team. At this time, NMFS will retain the animals in central California area in the eastern stock for management purposes. It is not surprising that populations of marine mammals or other species fluctuate in the margins of their ranges.

Comment 15: The northern fur seal and Steller sea lion, western stock, SARs state that because the stock ''is declining for unknown reasons that are not explained by the level of direct human-caused mortality, there is no guarantee that limiting those mortalities to the level of the PBR will reverse the decline''. While this may be true, it is also true that limiting the anthropogenic mortalities will prevent them from contributing to the decline. This logic is contradicted by the rationale used in the Cook Inlet beluga SAR which designates an ''undetermined'' PBR. The PBR for fur seals should be undetermined.

Response: NMFS explained its rationale for including a PBR for these stocks in the response to comment 8. It is not necessarily true that limiting anthropogenic mortality in a declining stock would prevent such mortality from contributing substantially to the decline.

Comment 16: One commenter strongly supports the urgent need to sub-divide harbor seal stocks into discrete management units and expresses disappointment that NMFS has again postponed this decision. These stocks should be re-classified so that each will have appropriate PBR and assessments of trends and status.

Response: As in past responses to public comments on the SARs, NMFS reiterates its commitment to work with its co-managers in the Alaska Native community to make recommendations regarding stock structure of harbor seals in Alaska.

Comment 17: It is unfortunate that abundance estimates of harbor seals are still calculated based on 1996–2000 surveys and that all, or at least part, of the 2001–2005 surveys data remain unreported in the SAR. That data from 2000 remain unpublished six years after

they are gathered is unfortunate, to say the least.

Response: In recent years, analysis of the harbor seal abundance information has been slowed due to a backlog of data and advances in abundance estimate procedures. New estimates for 2001–05 are under development and should be available for inclusion in the draft SARs for 2008.

Comment 18: The subsistence harvest data for ice seals (spotted, bearded, ringed, and ribbon) are old and there are no ongoing efforts to collect more recent data. NMFS should include a chart that reports annual subsistence harvests

Response: NMFS has insufficient resources to collect information on the subsistence harvest of ice seals on an annual basis. Old information on harvests will be retained as the best available information on harvest levels until more current information becomes available, and the dates of these estimates will be retained so that the underlying uncertainty is obvious. NMFS will consider the inclusion of a chart reporting annual subsistence harvests for future versions of the SARs and after consultation with the SRG.

Comment 19: NMFS should remedy the factors leading to its inability to estimate a PBR and assess stock status for all stocks of ice seals. Considering that harvest data are old and ice conditions are deteriorating significantly, it is vital that updated estimates be made.

Response: NMFS will pursue the collection of information needed to identify stocks and estimate the PBR levels and harvest data for ice seals when resources are available.

Comment 20: It is unclear why NMFS made changes to the Habitat Concerns sections of ice seal SARs that downgrades the assessment of changes in climate from ''drastic'' to ''significant''.

Response: This modification to the report should not be interpreted to indicate a difference in the assessed level for effects of climate change. The published literature used to document these specific habitat concerns actually uses the term ''significant'', which is defined and supported quantitatively.

Comment 21: The population estimates for the Beaufort Sea, Chukchi Sea, and Eastern Bering Sea beluga whale stocks are substantially and inappropriately outdated, and the stocks are subjected to harvest-related and incidental mortality. These stocks should be considered potentially strategic for these reasons.

Response: The SAR for these four stocks of beluga whales are next scheduled for a review and update in 2008, and this comment will be considered at that time.

Comment 22: The Cook Inlet beluga whale stock is of considerable concern. We support the adopted precautionary PBR set at ''undetermined'' and believe the stock should be listed as endangered under the Endangered Species Act (ESA).

Response: NMFS agrees with the PBR comment. A status review of the Cook Inlet beluga stock is currently underway. The report of the biological information related to their status is available at: http://www.afsc.noaa.gov/Publications/ProcRpt/PR%202006–16.pdf.

Comment 23: One commenter supports the precautionary approach used when reducing the Alaska Resident killer whale abundance estimate based on the age of the data.

Response: NMFS agrees.

Comment 24: The data used for developing the population estimate for Northern Resident killer whale are at least 6 years old. NMFS should update this in the near future and given the low PBR (2), we are concerned about the lack of Canadian fishery mortality information. NMFS should work with Canada to obtain these data.

Response: The SAR for the Northern Resident killer whale stock is next scheduled for a review and update in 2008, and this comment will be considered at that time.

Comment 25: The abundance and sightings data for AT1 transient killer whale stock are old and should be updated.

Response: The abundance of AT1 killer whales is monitored each year by an independent researcher, who is a member of the SRG. The report cites personal communication with that research for an abundance estimate of eight whales in 2004. Since 2004, the researcher's observations have not indicated that the status of the stock has changed or that the status could be assessed more accurately. Therefore, NMFS has not revised the rerport. As new information is presented indicating a change in abundance, NMFS will incorporate such a change in future revisions of the report.

Comment 26: The use of an abundance estimate for Pacific white-sided dolphin that is outdated and derived from personal communications is inappropriate. The region has appropriately left the PBR undefined.

Response: NMFS agrees.

Comment 27: It is inappropriate to re-classify the Pacific white-sided dolphin stock as non-strategic simply because there is no evidence that take exceeds PBR. There is also no evidence that it does not. There is no PBR and no reliable fishery data even though there is acknowledgment that takes are likely to occur in fisheries. The stock should be retained as strategic.

Response: NMFS disagrees. Although many of the fisheries that overlap with this stock are observed, and some fisheries are subject to high levels of observer coverage, no mortality or serious injury of Pacific white-sided dolphins has been observed. In addition, there have been no self reports or stranding data indicating that serious injuries or mortalities have occurred. Because the estimated level of serious injury and mortality is zero, this stock should no longer be designated as ''strategic'' despite uncertainty due to age of the abundance estimate.

Comment 28: The surveys used for estimating Southeast Alaska harbor porpoise abundance are older than recommended under GAMMS. Re-analyzing these data does not make them new. Therefore the PBR should be undetermined.

Response: NMFS recognizes that the estimates for the harbor porpoise stock in southeast Alaska are dated. Setting the PBR level as ''undetermined'' is not necessary as updated abundance estimate for this stock is forthcoming due to surveys conducted in 2006.

Comment 29: One commenter agreed that all three stocks of harbor porpoise in Alaska should be classified as strategic.

Response: NMFS agrees.

Comment 30: Using the region's rationale for classifying Alaska harbor porpoise stocks as strategic, the Alaska stock of Dall's porpoise should also be classified as strategic. The abundance data are old and cannot be used to estimate either a minimum population or PBR. While there are no data to indicate that mortality exceeds PBR, there are no data to indicate that it does not, since PBR is undetermined.

Response: Although the abundance estimate is old, the last estimate of this population indicated that the population is very abundant. Further, there is no information that would indicate that the abundance has changed appreciably over the past several years; observer programs on the fisheries overlapping with this stock have not reported substantial incidental mortality or serious injury. NMFS will continue to calculate a PBR for the Alaska stock of Dall's porpoise.

Comment 31: The fact that there are no recent estimates of abundance, that PBR is unknown, and that fishery-related mortality could be occurring in all stocks of beaked whales in Alaska (Baird's, Cuvier's, and Stejneger's)

argues for designating these stocks as strategic.

Response: NMFS recognizes that the abundance estimates are old and, in consultation with the SRG will consider whether to continue reporting the PBR for these stocks in future reports.

Comments on Atlantic Regional Reports

Comment 32: We reiterate our belief that data on mortalities of large whales (e.g., humpback, finback and Northern right whale) can be provided on a more timely basis than data on small cetaceans and should be more current than 2004. The need to extrapolate observed mortality of small cetaceans to fleet-wide mortality estimates results in the understandable situation in which small cetacean mortality estimates are only for years up to 2004. But the ''body count'' of ship-struck or entangled large whales needs no such extrapolation and the data should be the most recently available - in this case at least through 2005.

Response: A review of entanglement and injury reports is not a straight forward ''body count'' because the evidence has to be evaluated to distinguish between serious and non-serious injury. After each case has been evaluated and a determination made for each injury, the results are subjected to scientific review. This process was not complete when the 2006 draft SARs were completed for review by the SRGs; therefore, the mortality estimates for large whales consist of the latest year of information that has been subjected to evaluation and scientific review. The latest reviewed information will be included as SARs are updated in the future. NMFS will consider changes to this procedure in future meetings with the SRG.

Comment 33: For short and long-finned pilot whales, Risso's dolphins and white-sided dolphins, estimates of mortality and other important information have been withheld pending presentation to a take reduction team that met in September 2006. The new verbiage states that the data are undergoing ''scientific review'' which implies review by the SRG. This is not the case, and the language should be changed to reflect that this is solely an internal NMFS review. We assume these data will be incorporated in the next SAR.

Response: Reference to the Take Reduction Team has been removed. The new information is expected to be included in the 2007 SARs, and it will have been subjected to scientific review, including the SRG, before the draft is made available for public review and comment.

Comment 34: Until new information is available, it is not appropriate to omit older information. Reviewers need to have some estimates on which to base a general understanding of fisheries that interact with the species (e.g., the discussion of various bottom trawl fisheries and incidental mortality of Risso's dolphins and pilot whales). Please reinstate the original omitted verbiage until it can be replaced by newer information.

Response: The older numbers were calculated using different analytical methods, and the fisheries have been revised. The old information is not applicable to the new categories, and its inclusion could be confusing and misleading to reinstate the old data. Therefore, NMFS has omitted the older information.

Comment 35: We renew our request that NMFS continue its focal efforts to define the boundaries of short-finned and long-finned pilot whales which are taken in multiple fisheries and yet are managed with a single PBR as though they are a single stock. The NMFS has been undertaking analysis of stock boundaries for pilot whales that it is inappropriately managing as a single stock This sort of analysis should be discussed, or at least alluded to in the SAR so that reviewers understand that efforts are underway to appropriately separate the two stocks as was done for harbor seals in Alaska.

Response: The SARs were revised to allude to ongoing research activity to identify stock boundaries and assign abundance and mortality accordingly.

Comments on Pacific Regional Reports

Comment 36: It is inappropriate to remove discussion of various anthropogenic threats to the Southern Resident stock of killer whales as well as mention of this stock's special status in Canada, into which the stock's range extends.

Response: The discussion relating to the natural and anthropogenic threats of this stock was included in the report during its status review. When the status under the ESA was changed due to the stock's listing as ''endangered'', the narrative in the ''Status of the Stock'' section became unnecessary.

Comment 37: Recent information on gillnet-related mortality of Hawaiian monk seals was not included in the draft stock assessment and a clarification on whether monk seal interactions with gillnets typically involve debris or active gear was requested.

Response: No gillnet deaths are listed in the table because none were documented during the 5 years covered in the table. There was one recent pup death (2006), but it is not included in the draft 2007 SAR which covers fishery data through 2005. The reason for this is that preparation of the 2007 draft SAR occurs in late 2006, before complete annual data for 2006 are available. There was a gillnet-related serious injury in 2005 that will appear in the 2007 draft table. Monk seal entanglement in debris, whether the remains of fishing gear or other material, is reported in the section of the report on other human-caused mortality rather than in the fishery mortality section.

Comment 38: Personal communications are used as the source of information for mortality of the San Miguel Island stock of northern fur seals from 2001 and 2003. Effort should be made to assure that these sorts of information come from published sources where possible and/or to assure the NMFS employees providing this information incorporate it into published reports for future use.

Response: The SAR has been changed to cite Marine Mammal Stranding Network records maintained by NMFS Regional Offices as the source of information for fishery-related strandings. Because this information is meant only as background rather than as an estimate of fishery-caused mortality or serious injury, the information may not be included in a future publication.

Comment 39: In the face of evidence that mortality of short-finned pilot whales is occurring (with wide CVs) and the knowledge that this fishing gear is insufficiently monitored, it would be precautionary to consider the stock strategic until more precise abundance and mortality information is available.

Response: The assessments explicitly take uncertainties in mortality and abundance estimates into account in a standardized way, consistent with the guidelines developed for assessing marine mammal stocks. The level of uncertainty in mortality and abundance of short-finned pilot whales is within the range of those addressed in these guidelines. Mortality estimates are based on 12–26 percent observer coverage in the Hawaii-based longline fleet. The PBR for the Hawaiian stock of short-finned pilot whales is 65 animals. There was no mortality or serious injury documented within the Hawaiian EEZ during 2000–2004. Therefore, a strategic designation is not warranted.

Bottlenose Dolphin, California Coastal Stock

Comment 40: NMFS is applying a new methodology for calculating PBR because the stock spends only part of its time in U.S. waters. It appears a portion

of the PBR is allocated to Mexico. The SAR states a correction factor of 0.82 could be used if the population were distributed randomly and then notes that the populations is not distributed randomly. Thus, use of 0.82 as the correction factor seems inappropriate

Response: Decreasing PBR for transboundary stocks is not a new methodology, and the method used for this report is consistent with NMFS' guidelines for calculating PBR for stocks that spend only a portion of the time in waters under U.S. jurisdiction. It was first used in 1995 for humpback whales, CA/OR/WA stock. Although the commenter suggested an implicit allocation of PBR to Mexico, PBR is not allocated. Rather, at the end of the year, human-caused mortality is compared to PBR to assess the stock's status (strategic vs. non-strategic). In the case of California coastal bottlenose dolphins, NMFS has no estimate for human-caused mortality outside the U.S. Exclusive Economic Zone and has reduced the PBR so that the effect of human-caused mortality and serious injury in the U.S. is not underestimated. The report states explicitly that the correction factor of 0.82 is applied until sufficient information is available to calculate an appropriate correction. When research yields sufficient information to calculate a more appropriate correction, the newer value will be used. Until then, use of the interim correction provides a better approximation of the effect of human-caused mortality and serious injury in the U.S. than an uncorrected PBR would provide.

Comment 41: The stock assessment does not state whether or not estimates of mortality are available from Mexican waters.

Response: The stock assessment states that coastal gillnet fisheries exist in Mexico and may take animals from this population, but no details are available. The statement means that estimates of mortality in Mexico are not available. NMFS will continue to seek information on possible fishery interactions with this stock in Mexican waters.

Comment 42: Concern was expressed that observer coverage in the halibut set gillnet fishery has been nonexistent to low over the last several years. A clarification of fishery-related mortality for this stock was also requested.

Response: A renewed observer program began in the California halibut set gillnet fishery in 2006, which will provide approximately 10 percent observer coverage for this fishery. Fishery-related mortality is included in Table 1 of the stock assessment report, which details one animal that was entangled in 3.5 inch mesh netting from an unknown fishery

Harbor Porpoise, Oregon and Washington Stocks

Comment 43: Oregon and Washington harbor porpoise abundance data are from an unpublished source.

Response: Oregon and Washington harbor porpoise abundance data from the most recent aerial surveys have not yet been published but will be published in the future. The methodologies and analyses used in these abundance estimates have been peer-reviewed and applied for years.

Comment 44: In the report for the Oregon and Washington coast stock, the chart showing fishery-related mortality states that there was ''no fishery'' for the past several years for the Northern Washington marine set gillnet fishery. The text should briefly discuss possible reasons for this.

Response: Text has been added to the Oregon/Washington Coast harbor porpoise SAR to discuss the reduction in fishing effort in the Northern Washington marine set gillnet fishery in recent years due to reduced numbers of chinook salmon (a target species) in coastal waters.

Comment 45: The SAR for the Washington inland waters stock provides a substantially higher estimate of abundance than in the previous SAR and a much greater minimum population estimate. It would be helpful to discuss possible reasons for this.

Response: The abundance of the Washington Inland Waters harbor porpoise stock has increased since the previous survey in 1996. The most recent abundance estimate for this stock is an average of estimates from surveys in 2002 and 2003 and both of these surveys produced very similar results. Calves comprised 10 percent of the counts in 2002 and 2003 compared to 2 percent of the count in 1996, suggesting an increase in reproduction which would provide population growth. During this same time, the percentage of calves in counts of the Oregon/Washington Coast stock of harbor porpoise remained the same (10 percent in both the 1997 and 2002 surveys). Information in the SAR is limited to a reporting of the abundance estimates and does not include the explanation above because NMFS has maintained the SARs as very brief presentations of the information required by the MMPA; interested readers can obtain the literature cited in each SAR for addition details.

False Killer Whales, Hawaii Stock

Comment 46: NMFS should explain the limitations and the agency's use of the population data currently available, as well as clarify the discussion of mortality and serious injury attributable to the fishery in the SAR.

Response: The population data in the current SAR are used according to established and published guidelines (Wade and Angliss, 1997, and the 2005 revisions to the guidelines, both of which are available on the Internet; see ADDRESSES). Details of the mortality and serious injury attributable to the fishery are provided in the reference cited in the SAR (Forney and Kobayashi). The SARs are intended to summarize results of references related to population status, not reproduce details available in the cited reports.

Comment 47: NMFS should provide a range of plausible abundance estimates, minimum population estimates, and PBR levels for false killer whales in the Hawaiian Economic Exclusive Zone (EEZ), similar to the approach used for false killer whales in the Palmyra Atoll EEZ.

Response: The estimated range of plausible estimates for the Palmyra Atoll EEZ was previously provided because there were no survey data available for that geographic region. In contrast, there have been multiple surveys (Barlow, 2006, Mobley et al., 2001, Baird et al., 2003, 2005, within waters of the Hawaiian EEZ (one extending throughout the EEZ and the others closer to the Main Hawaiian Islands). All existing data indicate that the population size of false killer whales in Hawaiian EEZ waters is small. When survey data are available, it is always preferable to use the actual data, rather than rely on plausible estimates based on surveys conducted elsewhere. In the 2007 draft SAR the range of plausible estimates for the Palmyra EEZ has accordingly been replaced with the actual estimates of the 2005 shipboard survey in that region.

Comment 48: Issue a revised draft SAR, which addresses the concerns expressed in this comment letter, and submit it for meaningful public comment.

Response: The comments on this SAR did not warrant revision of the SAR. As new information becomes available, NMFS will update the SAR and solicit public review and comment as required by the MMPA.

Comment 49: NMFS should undertake a new population survey that accounts for the known seasonality of false killer whale abundance in the Hawaiian EEZ and the presence of false killer whales near the Main Hawaiian Islands and outside the EEZ.

Response: NMFS will continue to conduct population surveys and improve analysis methodology for the

assessment of cetaceans in U.S. waters as resources. However, there is no scientific evidence of seasonality in occurrence of false killer whales within the Hawaiian EEZ (see detailed comments below). During 2005, a survey was completed that provided additional data for estimation of false killer whale abundance in waters of the Hawaiian EEZ, the Palmyra Atoll EEZ, in international waters these two EEZ, and westward to the Johnston Atoll EEZ.

Comment 50: NMFS should revise its 1998 guidelines on mortality and serious injury to provide an accurate methodology for assessing the impacts of fishery-related take of false killer whales.

Response: NMFS, in conjunction with the Commission, FWS, and representatives of regional SRGs, reviewed and revised its guidelines for preparing SARs in 2003 and issued final revisions in 2005 following public review and comment. The guidelines provide accurate methodologies for evaluating mortality and serious injury of marine mammals incidental to commercial fishing and other sources. The SAR guidelines note that NMFS anticipates periodic review and revision of the SAR guidelines to incorporate new information and experience in implementing the MMPA. Also, see response to comment 4.

Comment 51: The numerous flaws in extrapolating from the limited population data available for the Hawaiian stock of false killer whales have been acknowledged for some time.

Response: The ''flaws'' alleged in this comment refer to older population data that are not used for the current assessment and are provided in the stock assessment report only as background information. The current abundance estimate, based on the 2002 survey, is not subject to these same limitations, and there is no scientific evidence to suggest that this estimate is biased or is an underestimate of the population size.

Comment 52: The population estimate appears to be extrapolated from a single false killer whale sighting made during the 2002 survey, and numerous false killer whales have been sighted in the Main Hawaiian Islands. Consequently, the SAR must acknowledge the high degree of uncertainty and potential for error.

Response: The population estimate is based on the overall encounter rate of false killer whales during an extensive 5–month ship survey, according to established line-transect methodology. Although the observation of only one false killer whale sighting during these surveys increases the uncertainty (CV) around the estimate, it is a valid scientific estimate. This uncertainty is clearly stated in the SAR. This comment focuses only on the sighting and does not note the survey effort by well-trained observers using powerful binoculars that produced no additional false killer whale sightings, despite many sightings of other dolphins and whales. The lack of false killer whale sightings through much of the survey indicates that false killer whales are sparsely distributed over a very large area in the Pacific Ocean. Observations of false killer whale sightings around the main Hawaiian Islands include many of the same individuals, seen repeatedly over many years by other researchers. The incidence of resightings in these nearshore waters indicates that the population of false killer whales around the Hawaiian Islands is small.

Comment 53: Assuming 236 is the mean for calculating the CV, the estimated population could be anywhere from -30 to 472.

Response: The range of populations sizes suggested in this comment is inappropriate. Abundance estimates generally have log-normally distributed errors, and the resulting 90 percent confidence interval of the population estimate, calculated for a CV=1.13, is 44–1,252.

Comment 54: NMFS must explain why the abundance and minimum population estimates for Hawaiian false killer whales are lower in the draft SAR than in previous SARs, even though these estimates are based on the same 2002 survey.

Response: Following submission of the original analysis as a manuscript for publication in Marine Mammal Science, a reviewer recommended some improvements to the analyses. These improvements were made, and the revised analysis yielded slightly lower estimates. Such an approach is in accordance with standard review procedures. Thus, the lower estimate resulted from an improved analysis of the same survey data.

Comment 55: The abundance survey was conducted between August and November, a time of year when false killer whales abundance and pod size is believed to be low. Reliable anecdotal information, confirmed by the results of an analysis by NMFS's Pacific Islands Fisheries Science Center (supporting information was included in the comment), indicates that the Hawaiian stock of false killer whales exhibits seasonal behavior.

Response: There is no scientific evidence of seasonality in false killer whale abundance or pod size within the Hawaiian EEZ. In contrast to the comment's claim of seasonality, the information supplied by the commenter states that ''month'' was not a significant factor in the observer data analyzed. In addition, ongoing studies of cetaceans around the main Hawaiian Islands (Baird *et al.*, 2003, 2005, cited in the SAR) have documented false killer whales in nearly all months surveyed, with no evidence of seasonality in their occurrence. Additional published information cited by the commenter indicates seasonal influence on distribution of false killer whales; however, these papers refer to the seasonal occurrence of this tropical species in temperate waters off Japan, Russia and Canada, rather than the tropical waters around Hawaii.

Comment 56: Given the difficulties in observing false killer whales, the extreme limitations of the known data, and the seasonal variations in abundance and pod size, extrapolations from the sighting of a single individual, assumed to represent a very modest pod size of 10 individuals, cannot reasonably be supported as a basis for reliable population estimate.

Response: MMPA section 117 requires NMFS to prepare marine mammal stock assessment reports that are ''based on the best scientific information available.'' The abundance estimate for false killer whales was based on an extensive ship-board survey designed and conducted by experts in marine mammal population assessment. The survey design and subsequent data analyses were consistent with peer-reviewed, established methods, and the results have been published in the peer-reviewed literature. Accordingly, the estimates presented are based on the ''best scientific information available'', as required by the MMPA.

Comment 57: NMFS applied a diving correction factor of 0.76, meaning that NMFS estimates that about 75 percent of false killer whale species should be observable at the surface of the ocean during survey work. False killer whales are a cryptic species that follow schools of prey species, such as tuna. In many cases, commercial fisheries have experienced severe depredation of catch by false killer whales, yet participants in the fishery have not seen signs of the species at the surface of the water. Accordingly, NMFS' assumptions regarding diving behavior are biased and do not reflect the species actual behaviors.

Response: NMFS disagrees. The commenter has misunderstood the application and significance of the correction factor of 0.76 applied by

NMFS and is inappropriately comparing observations made by personnel on fishing vessels to observations made by trained marine mammal observers using high-powered binoculars during dedicated marine mammal surveys. The correction factor of 0.76 does not represent the proportion of time animals are at the surface, as suggested by the commenter. Rather, the correction factor accounts for animals that are present on the survey trackline, (that is, during the time the vessel was in sight of the animals, the animals were at the surface at least briefly along the trackline), but not detected by the observer. Although animal behavior is part of the correction, there are other important factors that must be considered, such as weather (e.g., wind), the height of the viewing platform, the number of observers, and the use of high powered binoculars. The correction factor developed by NMFS is appropriate and scientifically valid for estimation of abundance based on the NMFS ship survey.

Comment 58: The population estimates contained in the draft SAR are prone to underestimation because they are premised on the assumption that the Hawaiian population of false killer whales is genetically distinct.

Response: NMFS disagrees. The line-transect methodology used to estimate the abundance of false killer whales does not rely on genetic distinctness. Rather, it reflects the total number of animals estimated to have been in the study area during the survey period. Furthermore, the genetic distinctness of false killer whales around the main Hawaiian Islands (described in the SAR) is based on an analysis of a large number of samples collected throughout the eastern and central Pacific, not merely on two samples obtained by fishery observers. NMFS continues to collect additional samples when possible and will refine stock structure as additional evidence becomes available; however, it is important to note that the finding of unique haplotypes around the main Hawaiian Islands confirms that these animals represent a distinct stock. NMFS will continue to provide updated information in the SARs as new results become available.

Comment 59: The actual distribution of the Hawaiian population of false killer whales is unknown. It is a certainty that the Hawaiian population of false killer whales is not geographically confined to the Hawaiian EEZ, as suggested by NMFS's regulatory definition of the stock. However, the extent of the stock's distribution beyond the Hawaiian EEZ is unknown, and so is the relative abundance of the population within the nearshore and open ocean areas of the EEZ. Nevertheless, the population estimate contained in the draft SAR assumes a static population confined to the Hawaiian EEZ.

Response: NMFS agrees with this comment only to the limited extent that stock or population structure of false killer whales in the Pacific Ocean is unknown. NMFS disagrees with the assertions, '' as suggested by NMFS' regulatory definition of the stock'' and ''the draft SAR assumes a static population confined to the Hawaiian EEZ''.

False killer whales are widely distributed in tropical and warm temperate waters of the Pacific Ocean. The available data indicate that there is population structure; however, there is insufficient information to identify each demographically independent aggregation (stock) or to identify the boundaries between adjacent aggregations. In the face of this uncertainty, NMFS has identified stocks (as management units) in accordance with the agency's established guidelines, which, in turn, were based, among other things, upon the policies and purposes of the MMPA. The initial guidelines and subsequent revisions of them were based upon workshops with participants from NMFS, FWS, the Commission, and representatives of the three regional SRGs and were made available for public review and comment (59 FR 40527, August 9, 1994; 62 FR 3005, June 2, 1997; and 69 FR 67541, November 18, 2004). Each set of guidelines has addressed stocks such as false killer whales that are broadly distributed in pelagic waters beyond the U.S. EEZ. The 1995 and 1997 guidelines stated, ''For situations where a species with a broad pelagic distribution which extends into international waters experiences mortalities within the U.S. EEZ, PBR calculations should be based on the abundance in the EEZ area unless there is evidence for movement of individuals between the EEZ and offshore pelagic areas.'' In the subsequent review and revision of the guidelines (2003–2005), NMFS modified these instructions to be more clear, due in large part to uncertainties and distribution of false killer whales in the Pacific Ocean. The current guidelines state, ''For situations where a species with a broad pelagic distribution which extends into international waters experiences mortalities within the U.S. EEZ, PBR calculations should be based on the abundance in the EEZ. If there is evidence for movement of individuals between the EEZ and offshore pelagic areas and there are estimates of mortality from U.S. and other sources throughout the stock's range, then PBR calculations may be based upon a range-wide abundance estimate for the stock.''

False killer whales are distributed beyond the U.S. EEZ surrounding Hawaii and are taken in fisheries within and outside the EEZ. Fishery mortality and serious injury within the EEZ can be estimated from data collected by fishery observers in the U.S. fishing fleet within and outside the EEZ. Mortality and serious injury incidental to fishing by vessels of other nations is unknown; however, these vessels do not fish within the U.S. EEZ and, accordingly, do not kill marine mammals within the U.S. EEZ.

Although it would be ideal to have sufficient information to identify the complete stock structure and boundaries for all false killer whales in the Pacific Ocean, to estimate mortality and serious injury from human-causes from all stocks, and to estimate the abundance (thus, calculate a PBR) for each stock of false killer whales, such a case does not exist, which results in several uncertainties. Accordingly, NMFS has limited the effect of uncertainty by identifying the Hawaiian stock to assess the impact of U.S. fishery-caused mortality and serious injury where the existing data allow. Such an approach allows NMFS to compare U.S. fishery-caused mortality and serious injury to a PBR where the stock is subject only to loss from U.S. fisheries. To do otherwise would be inconsistent with established guidelines, sound principles of wildlife management, and the purposes and policies of the MMPA.

Comment 60: Given the limited population data available for false killer whales in the Hawaiian EEZ, NMFS should explain why it did not use an approach similar that employed for the Palmyra Atoll.

Response: NMFS has not used this approach because it would not be based on the best scientific information available. A range of estimated plausible estimates was previously provided for the Palmyra Atoll EEZ because there were no survey data available for that geographic region. In contrast, there have been multiple surveys (Barlow, 2006, Mobley *et al.* 2001, Baird *et al.*, 2003, 2005) within waters of the Hawaiian EEZ (one extending throughout the EEZ and the others closer to the Main Hawaiian Islands). All existing data indicate that the population size of false killer whales in Hawaiian EEZ waters is small. When survey data are available, it is appropriate to use the actual data and associated estimates, rather than rely on

plausible estimates based on surveys conducted elsewhere.

Comment 61: There are serious uncertainties in the existing population data and flaws in the agency's assumptions about take attributable to the Hawaii longline fishery that case NMFS to underestimate false killer whale populations and overestimate fishery-related mortality and serious injury.

Response: NMFS agrees that there are uncertainties in the data. However, the assessments explicitly take these uncertainties into account in a standardized way, consistent with the guidelines developed for assessing marine mammal stocks. There is no scientific evidence that indicates the abundance of false killer whales is underestimated or the mortality and injury of false killer whales in the Hawaii-based long-line fishery is overestimated. The methods used to estimate abundance have been peer-reviewed and published in a respected scientific journal. Furthermore, several of the unidentified cetaceans that were injured or killed in the fishery were likely short-finned pilot whales or false killer whales, based on the observer's descriptions. These animals were not included in the estimation of serious injury and mortality of false killer whales; therefore, fishery-related mortality and serious injury were likely underestimated, not overestimated.

Comment 62: NMFS has not explained its rationale for classifying all take by the longline fishery as mortality or serious injury. Participants in a workshop on false killer whales have confirmed the view that the NMFS's working assumption (i.e. that all hookings results in death or serious injury) is likely to be incorrect.

Response: This comment mis-characterizes NMFS' approach to distinguishing between serious and non-serious injury by saying that NMFS considers all take by the longline fishery or all hookings to be serious injuries. The paper by Forney and Kobayashi (2005), reviewed and accepted by the SRG and cited in the SAR, clearly describes the rationale and process by which injuries are classified either as serious or as not serious.

Comment 63: NMFS should revisit its 1998 guidelines for distinguishing between serious and non-serious injury to develop a more refined method of assessing false killer whale takes.

Response: NMFS plans to review and, as appropriate, revise its guidance for distinguishing between serious and non-serious injury. A workshop initiating such an effort was originally scheduled for November 2006; however, it was postponed for budget reasons. When funding for FY 2007 is finalized by Congress, NMFS will assess options to convene the workshop and initiate the review of its serious injury guidance.

Comment 64: The Hawaiian pelagic longline fishery includes two separately managed fishing efforts, the shallow set swordfish fishery and the deep-set tuna fishery, which operate at different times of the year. Yet, NMFS does not distinguish between the swordfish and tuna fishery or address how bait, gear, timing and seasonal differences between the two pelagic longline fisheries affect the take of false killer whales. As a result, the draft SAR inaccurately suggests that the entire pelagic longline fishery should be treated as a uniform industry subject to the same false killer whale restrictions.

Response: NMFS disagrees. The report on mortality and serious injury of cetaceans in the Hawaii-based longline fishery (Forney and Kobayashi, 2005) clearly outlines the methodology used to differentiate between the different types of longline fishing that takes place. Estimates are based on a stratified analysis that takes into account differences in the types of cetaceans that interact with each component of the fishery, as well as inter-annual changes in fishing behavior and effort, such as those caused by regulations to protect sea turtles. The SAR reports the level of estimated serious injury and mortality of false killer whales but does not describe the details of the methods used in the estimates, which are available in the cited literature. Furthermore, the Hawaii-based longline fishery is under no restriction due to its false killer whale interactions.

Comment 65: The draft SAR over-generalizes the number and nature of false killer whale takes attributable to the Hawaiian pelagic longline fishery. Figure 3 in the SAR contains markers for ''possible'' false killer whale takes. However the draft SAR does not reveal why these possible takes should be considered false killer whales rather than other cetacean species. Figure 3, therefore, creates an unsupportable implication that the fishery has taken more false killer whales than indicated by fishermen's logs and observer reports.

Response: NMFS disagrees that the SAR over-generalizes the number and nature of false killer whale takes attributable to the longline fishery. The report on mortality and serious injury of cetaceans in the Hawaii-based longline fishery (Forney and Kobayashi, 2005) clearly describes that the characterization of some unidentified cetacean takes as possible false killer whale takes is based on the observers' descriptions of the animals. To clarify this, we have added text to the final 2006 SAR that the designation as possible false killer whales was based on the observers' descriptions. Figure 3 in the Draft SAR presents the most accurate picture of false killer whale mortality and serious injury in the Hawaii-based longline fishery, and the caption clearly describes the source of the information. The inference that a reader makes from Figure 3 is not important from a conservation or management perspective. Rather, the important information from a management perspective in the SAR is the number of fishery-caused mortalities and serious injuries included in the text and the summary table. The ''possible'' takes are not included in the mortality and serious injury attributed to the fishery.

Comment 66: Successful catch depredation indicates that there are false killer whale interactions with the fishery which do not result in mortality or significant injury. As written, it is not clear whether the take accounted for in Figure 3 and/or Table 1 of the draft SAR includes this information.

Response: Forney and Kobyashi, 2005, clearly explains that only interactions resulting in hooking and/or entanglement of cetaceans are included, not other types of interactions, such as depredation. We have added some text to the Draft 2006 SAR to clarify this. However, NMFS does not intend to expand SARs to include every possible bit of information related to the affected stock of marine mammals. The MMPA is clear that certain information is required, and NMFS has implemented MMPA section 117 to produce concise SARs that contain only the brief summaries required by the Act. Each SAR contains an extensive literature cited section so that interested readers may obtain more detail than is included in the SAR.

Comment 67: NMFS must explain why the estimated mortality and serious injury to false killer whales increased in the 2006 draft SAR, when the estimated overall interactions with the longline fishery decreased. To the extent NMFS believes the answer lies in maintaining a consistent 5–year time period for analyzing mortality and serious injury, HLA submits that such an approach is not reasonable given the rarity of an observed false killer whale take. HLA believes the more prudent approach is to consider observer data from all 11 years for which it is available in order to account for the variable nature of take data.

Response: NMFS disagrees. The fishery underwent significant regulatory modification, including seasons and gear, to protect sea turtles beginning in 2000, and the gear and set characteristics of the fishery changed. Thus, it would not be appropriate to include data for the earlier fishing practices. The guidelines for assessing marine mammal stocks recommend using the most recent 5 years of available data to balance the use of current information with the need to average across multiple years for rarely observed events.

Dated: March 13, 2007.

James H. Lecky,

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

[FR Doc. E7–4956 Filed 3–16–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Office of the Secretary of Defense (Health Affairs)/TRICARE Management Activity

AGENCY: Department of Defense.

ACTION: Notice of a disease management demonstration project for TRICARE Standard beneficiaries.

SUMMARY: This notice is to advise interested parties of a Military Health System (MHS) demonstration project entitled Disease Management Demonstration Project for TRICARE Standard Beneficiaries. Although there are many similarities between TRICARE Standard and TRICARE Prime as to the preventive health care services that may be provided in the current benefit, there are services that are expressly excluded under TRICARE Standard that may be offered under TRICARE Prime which are the essence of a disease management (DM) program. TRICARE currently requires the Managed Care Support Contractors (MCSCs) to provide ''disease management services'' under the current contracts, without specific guidance. Based upon the current legal statutes authorizing preventive health care services, TRICARE must conduct a demonstration under 10 U.S.C. 1092 in order to offer TRICARE Prime benefits to TRICARE Standard beneficiaries under the DM program already in existence. (Section 734 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (henceforth NDAA 2007) does not give any broader authority than exists today). Under this demonstration, disease management services will be provided to TRICARE Standard beneficiaries as part of the current MHS DM programs. The demonstration project will enable the MHS to provide uniform policies and practices on disease and chronic care management throughout the TRICARE network. Additionally, the demonstration will help determine the effectiveness of DM programs in improving the health status of beneficiaries with targeted chronic diseases or conditions, and any associated cost savings.

DATES: *Effective Date:* April 1, 2007. This demonstration will remain in effect until March 31, 2009.

ADDRESSES: TRICARE Management Activity (TMA), Office of the Chief Medical Officer, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: CDR Cynthia Gantt, Office of the Chief Medical Officer—TRICARE Management Activity, telephone (703) 681–0064.

SUPPLEMENTARY INFORMATION:

A. Background

The Military Health System (MHS) is a $33 billion dollar enterprise, consisting of 76 military hospitals, over 500 military health clinics, and an extensive network of private sector health care partners, which provides medical care for over 9 million beneficiaries and active duty service members. Of these beneficiaries, approximately 5 million are classified as TRICARE Prime enrollees and 4.2 million are TRICARE Standard participants.

The MHS is facing significant fiscal challenges in the coming years due to the rising costs of providing health care, coupled with recent expansions to the pool of eligible beneficiaries. The MHS recognizes these challenges and has implemented several new initiatives to help control costs. Disease management (DM) programs have become popular in the private sector as a means to accomplish this goal, with varying levels of effectiveness having been documented. The MHS has the opportunity to become a leader in DM, due to its population of long term or life time eligible beneficiaries and robust information systems.

B. MHS Disease Management Program

On September 1, 2006, the MHS implemented a new DM initiative based on a consistent approach across all three managed care regions, focusing on asthma and congestive heart failure. These programs run by the Managed Care Support Contractors (MCSCs) include beneficiaries from military treatment facilities and those seen by civilian healthcare providers within the TRICARE network. In this revised uniform approach to DM, the Government, with the assistance of a program evaluation contractor, provides the MCSCs risk-stratified patient lists and conducts a formal evaluation across all three Regions using national benchmarks.

TRICARE's approach to disease management is two-fold: (1) Keep the well healthy with a focus on healthy lifestyles, disease prevention and health promotion and (2) maintain an active disease management program for high risk beneficiaries with specific chronic disease conditions. Evidence-based clinical practice guidelines (CPGs) and educational resources developed jointly by the Departments of Defense (DoD) and Veterans Affairs (VA) are used in both the military treatment facility and MCSC DM programs.

The MHS DM program directly supports the MHS strategic goal of effective patient partnerships by advocating the use of evidence-based practice guidelines and emphasizing patient self management skills. The goals of the DM initiatives are to improve clinical outcomes, increase patient and provider satisfaction, and ensure appropriate utilization of resources.

C. Current TRICARE Standard Benefit

Under 10 U.S.C. 1079(a)(13), TRICARE may cost share only services or supplies that are medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by an authorized provider. There is additional statutory authority that describes what are preventive health care services. Under 10 U.S.C. 1074d, members and former members of the uniformed services are entitled to preventive health care services including cervical cancer screening, breast cancer screening, and screening for colon and prostate cancer, all at intervals and using methods the Secretary considers appropriate. These same services are available to them and all dependents in MTFs under 10 U.S.C. 1077(a)(14), and to all covered beneficiaries under TRICARE under 10 U.S.C. 1079(a)(2). Under 10 U.S.C. 1079(a)(2)(B), other health promotion and disease prevention visits for those over six years of age are authorized under TRICARE Standard only when done in connection with immunizations or with diagnostic or preventive cancer screening tests. (See also, 32 CFR 199.4(g)(37)).

Additionally, the TRICARE Prime program is authorized by 10 U.S.C. 1097—1099. The statutes authorize Prime to ''provide better services than those provided by [Standard]'', and the Secretary ''shall prescribe regulations to carry out this section.'' The regulations that directly impact the TRICARE Prime program are 32 CFR 199.17 and 199.18. Under 32 CFR 199.18(b)(2), the following services are available under TRICARE Prime that are not authorized under TRICARE Standard:

(1) ''Periodic health promotion and disease prevention exams;

(2) Appropriate education and counseling services. The exact services offered shall be established under uniform standards established by the Assistant Secretary of Defense (Health Affairs).

(3) In addition to preventive care services provided pursuant to paragraph (b)(2) of this section, other benefit enhancements may be added and other benefit restrictions may be waived or relaxed in connection with health care services provided to include the Uniform HMO Benefit. Any such other enhancements or changes must be approved by the Assistant Secretary of Defense (Health Affairs) based on uniform standards.''

Also, under TRICARE Standard, education and counseling services are expressly excluded under 32 CFR 199.4(g)(39).

D. National Defense Authorization Act (NDAA) 2007 Disease Management Directives

The NDAA 2007 section 734 requires the design and development of a fully integrated program on disease and chronic care management for the military health care system that provides uniform policies and practices on disease and chronic care management throughout the TRICARE network by October 1, 2007. The NDAA 2007 further states the program ''shall include strategies for disease and chronic care management for all beneficiaries, including beneficiaries eligible for benefits under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*), for whom the TRICARE program is not the primary payer for health care benefits.''

The purposes of the MHS DM programs, as stated in the NDAA 2007, are to facilitate the improvement of the health status of individuals under care in the military health care system, to ensure the availability of effective health care services for individuals with diseases and other chronic conditions, and to ensure the proper allocation of health care resources for individuals who need care for disease or other chronic conditions. The NDAA 2007 mandates the DM program to address, at a minimum, the following chronic diseases and conditions: diabetes, cancer, heart disease, asthma, chronic obstructive pulmonary disorder, and depression and anxiety disorders.

E. Description of Demonstration Project

Under this demonstration, DoD will waive, for disease management services provided to TRICARE Standard beneficiaries, the provisions of 10 U.S.C. section 1079(a)(13) and 32 CFR 199.4(g)(39) that expressly exclude clinical preventive services for TRICARE Standard beneficiaries in the current benefit. The MHS will enroll TRICARE Standard beneficiaries in its DM programs. DM services provided to Standard beneficiaries will include, but are not limited to: clinical preventive examinations, patient education and counseling services, and periodic screening exams.

There will be a cap on MHS DM program costs not to exceed the amount approved by the contracting officer. The DM program costs are total costs of DM services provided to both Prime and Standard beneficiaries. Only those beneficiaries identified by TRICARE Management Activity (TMA) for disease management of asthma, congestive heart failure, and diabetes are included in the current program, with other diseases or conditions to be added in the future as funding permits. The beneficiaries identified by TMA are included in the DM program unless the beneficiary chooses to opt out.

This action will directly reduce variation across the system and result in improved consistency and quality for beneficiaries with targeted chronic illness, regardless of TRICARE classification. Furthermore, including TRICARE Standard beneficiaries in current DM efforts will inform the MHS about total potential savings and return on investment (ROI) associated with DM, a stated requirement for inclusion in the Congressional report per the NDAA 2007. The system-wide DM program will improve the quality of care by educating patients about their disease and helping them manage their symptoms, thereby avoiding many complications and possibly slowing the progression of their chronic disease, thus resulting in significant cost savings.

F. Implementation

The demonstration is effective on April 1, 2007.

G. Evaluation

An independent evaluation of the demonstration will be conducted. The evaluation will be designed to use a combination of administrative and survey measures of health care outcomes (clinical, utilization, financial, and humanistic measures) to provide analyses and comment on the effectiveness of the demonstration in meeting its goal of providing uniform disease management policies and practices across the MHS.

Dated: March 13, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–4924 Filed 3–16–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of 18 Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it intents to establish the U.S. Southern Command Advisory Group, as a discretionary Federal advisory committee.

This committee will provide the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff and the Commander, U.S. Southern Command independent advice and recommendations on the dynamic, transnational challenges facing the United States and its allies with respect to the U.S. Southern Command responsibilities. In accordance with DoD policy and procedures, the Commander U.S. Southern Command is authorized to act upon the advice emanating from this advisory committee.

The U.S. Southern Command Advisory Group shall be composed of no more than 25 members who are eminent authorities in the fields of national defense, geopolitical and national security affairs, or Latin America and the Caribbean. Committee members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109.

The U.S. Southern Command Advisory Group, in keeping with DoD policy to make every effort to achieve a balanced membership, include a cross section of experts directly affected, interested and qualified to advice on US security interests in the Americas. Committee members shall be appointed on an annual basis by the Secretary of Defense, and with the exception of travel and per diem for official travel, shall serve without compensation. The Commander, U.S. Southern Command shall select the committee's chairperson from the committee's membership at large.

The U.S. Southern Command Advisory Group shall meet at the call of the committee's Designated Federal Officer, in consultation with the Chairperson and the Commander U.S. Southern Command. The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

The U.S. Southern Command Advisory Group shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered committee, and shall report all their recommendations and advice to the U.S. Southern Command Advisory Group for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Department of Defense or any Federal officers or employees who are not members of the U.S. Southern Command Advisory Group.

FOR FURTHER INFORMATION CONTACT: Frank Wilson, DoD Committee Management Officer, 703–601–2554.

Dated: March 12, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1316 Filed 3–16–07; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 18, 2007.

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

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 13, 2007.

Angela C. Arrington,

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

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Post Vocational Rehabilitation Experiences Study (PVRES).

Frequency: Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 4,955.

Burden Hours: 5,958.

Abstract: This data collection is to implement a longitudinal study of former consumers of the State Vocational Rehabilitation Services Program, on long-term post-program experiences. It uses a stratified random sample and will be conducted using computer-assisted telephone interviewing. The findings will fill a gap in the knowledge about successful employment strategies and the use and need for other services after exit from VR.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3285. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E7–4921 Filed 3–16–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Coyote Business Park Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to implement BPA's portion of the Proposed Action identified in the United States Department of the Interior, Bureau of Indian Affairs' (BIA) Coyote Business Park Final Environmental Impact Statement (EIS) (DOE/EIS–0371, September 2006). BPA will remove and replace some existing wood transmission line structures with taller steel poles on BPA's portion of its Roundup-LaGrande 230-kilovolt (kV) transmission line that crosses the proposed Coyote Business Park on the Umatilla Indian Reservation in Oregon.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *http://www.efw.bpa.gov*.

FOR FURTHER INFORMATION CONTACT: Gene Lynard, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *gplynard@bpa.gov*.

SUPPLEMENTARY INFORMATION: BPA owns and operates the 230-kV Roundup-LaGrande transmission line that crosses the proposed Coyote Business Park site. The portion of the transmission line that crosses the business park site is supported by 12 wooden ''H-frame'' structures, each about 60 feet tall. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) has requested that BPA remove these structures and replace them with single steel poles about 110 feet tall. Taller steel poles will increase the clearance between the ground and the conductors and reduce the footprint of the line, thus expanding CTUIR's options for future parking and transportation needs. BPA has decided to remove and replace these structures.

Issued in Portland, Oregon, on March 5, 2007.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E7–4913 Filed 3–16–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC07–549B–000; FERC–549B]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 13, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due May 22, 2007.

ADDRESSES: Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filing/eforms.asp#549b*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC07–549B–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an e-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERConlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202)

502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–549B ''Gas Pipeline Rates: Capacity Information'' (OMB Control No. 1902–0169) includes both the Index of Customers Report under 18 CFR 284.13(c) and capacity reporting requirements under 18 CFR 284.13(b) and 284.13(d). This information is used by the Commission to implement the statutory provisions of sections 4, 5, and 16 of the Natural Gas Act (NGA), 15 U.S.C. 717c0717o, Pub. L. 75–688, 52 Stat. 822 and 830 and Title III of the NGPA, 15 U.S.C. 3301–3432, Pub. L. 95–621.

Capacity Reports

On April 4, 1992 in Order No. 636, the Commission established a capacity release mechanism under which shippers could release firm transportation and storage capacity on either a short or long term basis to other shippers wanting to obtain capacity. Pipelines posted available firm and interruptible capacity information on their electronic bulletin boards (EBBs) to inform potential shippers. On September 11, 1992, in Order No. 636A, the Commission determined, through staff audits, that the efficiency of the capacity release mechanism could be enhanced by standardizing the content and format of capacity release information and the methods by which shippers access this information, posted to EBBs.

On April 4, 1995 through Order No. 577 (RM95–5–000), the Commission amended § 284.243(h) of its regulations to allow shippers the ability to release capacity without having to comply with the Commission's advance posting and bidding requirements.

To create greater substitution between different forms of capacity and to enhance competition across the pipeline grid, on February 25, 2000 in Order No. 637, the Commission revised its capacity release regulations regarding scheduling, segmentation and flexible receipt point rights, penalties, and reporting requirements. This resulted in more reliable capacity information and price data being available that shippers needed to make informed decisions in a competitive market as well as to improve shipper's and the Commission's availability to monitor marketplace behavior.

Index of Customers

In Order No. 581 issued September 28, 1995 the Commission established

the Index of Customers (IOC) information requirement. The Index of Customers had two functions, first, for annualizing capacity held on pipelines and second, for providing capacity information to the market. The Index of Customers information aids the capacity release system by enabling shippers to identify and locate those holding capacity rights that shippers may want to acquire. The information was required to be posted on the pipeline's EBB and filed on electronic media with the Commission. The first Index contained, for all firm customers under contract as of the first day of the calendar quarter, the full legal name of the shipper, the rate schedule number for which service is contracted, the contract effective and expiration dates, and contract quantities.

In Order No. 637, the Commission required the following additional information: the receipt and delivery points held under contract as of the first day of the calendar quarter, the full legal name of the shipper, the rate schedule for which the capacity is held; the common transaction point codes; the contract number; a shipper identification number, such as DUNS; an indication whether the contract includes negotiated rates; the names of any agents or asset managers that control capacity in a pipeline rate zone; and any affiliate relationship between the pipeline and the holder of capacity. The Index is now provided through a quarterly filing on electronic media to the Commission and is posted on pipelines' Internet Web sites.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours
Capacity Reports &.			
IOC: 103	6	291	179,838
	4	3	1,236
Total			181,704

Estimated cost burden to respondents is as follows:

Capacity Reports: 179,838 hours/2080 work hours per year × $122,137 = $10,560,038;

Index of Customers (IOC): 1,236 hours/2080 work hours per year × $122,137 = $72,578;

Total Costs = $102,632,616.

The estimated annual cost per respondent is:

Capacity Reports = $ 102,525;

Index of Customers = $ 705.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; (7) transmitting, or otherwise disclosing the information; and (8) requesting *e.g.* waiver or clarification of requirements.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities, which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4989 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–23–001]

Algonquin Gas Transmission, LLC; Notice of Compliance Filing

March 13, 2007.

Take notice that on March 6, 2007, Algonquin Gas Transmission, LLC (Algonquin) submitted a compliance filing pursuant to the Commission's order issued February 27, 2007, in Docket No. CP07–23–000.

Algonquin states that copies of the filing have been served upon all affected customers of Algonquin and interested state commissions and all parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an

original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 March 28, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4985 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–39–001]

Black Marlin Pipeline Company; Notice of Filing

March 13, 2007.

Take notice that on March 6, 2007, Black Marlin Pipeline Company (Black Marlin) submitted to the Commission two exhibits supporting the testimony of a witness which were inadvertently omitted from its October 31, 2006 filing under this docket. In addition, Black Marlin submitted a correction to a schedule and a corresponding correction to one page of testimony. Black Marlin states that nothing contained in the filing will affect the rates or cost of service filed by Black Marlin in its October 31, 2006 filing and no party will be prejudiced by the Commission's acceptance of these minor corrections.

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 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 March 20, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4996 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–98–002]

Indicated Shippers v. Columbia Gulf Transmission Company; Notice of Compliance Filing

March 13, 2007.

Take notice that on March 2, 2007, pursuant to the directive of the Commission's Staff at the February 15, 2007 technical conference, Columbia Gulf Transmission Company (Columbia Gulf) submits this filing supplementing its proposal in the above referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4994 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–430–000; ER07–430–001]

Dunhill Power, L.P; Notice of Issuance of Order

March 13, 2007.

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

On March 12, 2007, 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 Dunhill 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 April 11, 2007.

Absent a request to be heard in opposition by the deadline above, Dunhill 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 Duhill, 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 Dunhill'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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4988 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreigen Utility Company Status

March 13, 2007.

High Prairie Wind Farm II, LLC	EG07–19–000
Wayzata California Power Holding, LLC	EG07–20–000
Cedar Creek Wind Energy, LLC	EG07–21–000
Dogwood Energy LLC	EG07–22–000
Reliant Energy Ormond Beach, Inc.	EG07–23–000
Camp Grove Wind Farm LLC	EG07–24–000
Fenton Power Partners I, LLC	EG07–25–000
Buena Vista Energy, LLC	EG07–26–000
Nuovo Pignone s.p.a.	FC07–6–000

Take notice that during the month of February 2007, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4986 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–342–000]

KO Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 13, 2007.

Take notice that on March 8, 2007, KO Transmission Company (KOT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Twenty-First Revised Sheet No. 10, to become effective April 1, 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 § 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4995 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ07–2–000]

Western Area Power Administration; Notice of Filing

March 13, 2007.

Take notice that on March 2, 2007, Western Area Power Administration (Western) filed non-jurisdictional modifications to its Open Access Transmission Tariff (OATT), Large Generator Interconnection Procedures and Large Generator Interconnection Agreement, and to incorporate its Small Generator Interconnection Procedures and Small Generator Interconnection Agreement in the OATT, pursuant to the Commission's Order Nos. 2003–C, 676, 676–A, 661, 661–A, 2006, 2006–A, 2006–B. Western also requests that the Commission issue a declaratory order determining that its Tariff maintains a ''safe harbor'' tariff and that it may not be denied transmission access by any FERC-jurisdictional public entity

pursuant to sections 35.28(e) and (f) of the rules and regulations.

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

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

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

Comment Date: 5 p.m. Eastern Time on April 2, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4990 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

March 13, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–155–000.

Applicants: Consumers Energy Company; Entergy Nuclear Palisades, LLC.

Description: Consumers Energy Company submits a compliance filing pursuant to Commission's 2/21/07 order.

Filed Date: 3/6/2007.

Accession Number: 20070306–5050.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 27, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4314–010.

Applicants: Old Dominion Electric Cooperative.

Description: Old Dominion Electric Cooperative submits an updated market power analysis in compliance with FERC's letter order issued 3/2/04.

Filed Date: 3/2/2007.

Accession Number: 20070312–0202.

Comment Date: 5 p.m. Eastern Time on Friday, March 23, 2007.

Docket Numbers: ER00–895–008; ER01–138–004; ER03–1283–007.

Applicants: Delta Person Limited Partnership; Onondaga Cogeneration Limited Partnership; Vineland Energy LLC.

Description: Delta Person Limited Partnership et al submits a non-material change in status related to the market-based rate authority granted each of the project companies.

Filed Date: 3/8/2007.

Accession Number: 20070312–0138.

Comment Date: 5 p.m. Eastern Time on Thursday, March 29, 2007.

Docket Numbers: ER04–1232–006.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revised pages to its OATT intended to implement a rate change for Southwestern Public Service Company.

Filed Date: 3/8/2007.

Accession Number: 20070312–0140.

Comment Date: 5 p.m. Eastern Time on Thursday, March 29, 2007.

Docket Numbers: ER06–1549–003; EL06–109–001.

Applicants: Duquesne Light Company.

Description: Duquesne Light Company submits an Affidavit of John F Rosser to support its request for transmission incentive rate treatment and on 3/9/07 submit a correction to this filing.

Filed Date: 3/8/2007; 3/9/2007.

Accession Number: 20070312–0213.

Comment Date: 5 p.m. Eastern Time on Thursday, March 29, 2007.

Docket Numbers: ER07–141–001.

Applicants: Florida Power Corporation.

Description: Florida Power Corp dba as Progress Energy Florida Inc submits a compliance filing concerning a cost-based power sales agreement with the City Mount Dora, Florida.

Filed Date: 3/8/2007.

Accession Number: 20070312–0134.

Comment Date: 5 p.m. Eastern Time on Thursday, March 29, 2007.

Docket Numbers: ER07–607–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services Inc (SCS) agent for Alabama Power Company et al submits information associated with the True-Up Informational Filings that SCS submitted to FERC and customers under the OATT on 4/29/04 and 4/29/05.

Filed Date: 3/2/2007.

Accession Number: 20070312–0142.

Comment Date: 5 p.m. Eastern Time on Friday, March 23, 2007.

Docket Numbers: ER07–608–000.

Applicants: Gerdau Ameristeel Energy, Inc.

Description: Gerdau Ameristeel Energy, Inc. submits a petition for acceptance of initial rate schedule waivers and blanket authority.

Filed Date: 3/8/2007.

Accession Number: 20070312–0141.

Comment Date: 5 p.m. Eastern Time on Thursday, March 29, 2007.

Docket Numbers: ER07–609–000.

Applicants: Project Orange Associates L.L.C.

Description: Project Orange Associates LLC submits an application for Order accepting initial tariff, waiving regulations, granting blanket approvals.

Filed Date: 3/8/2007.

Accession Number: 20070312–0143.

Comment Date: 5 p.m. Eastern Time on Thursday, March 29, 2007.

Docket Numbers: ER07–610–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Golden Spread Electric Cooperative, Inc submits Second Revised Sheet 500 and 501 to First Revised Rate Schedule 23 through 33.

Filed Date: 3/8/2007.

Accession Number: 20070312–0133.

Comment Date: 5 p.m. Eastern Time on Thursday, March 29, 2007.

Docket Numbers: ER07–611–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc on behalf of the Southern Companies submits information associated with the True-Up Informational Filing submitted to FERC and customers 5/1/06.

Filed Date: 3/2/2007.

Accession Number: 20070312–0132.

Comment Date: 5 p.m. Eastern Time on Friday, March 23, 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5006 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–073]

Alcoa Power Generating, Inc.; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 13, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2197–073.

c. *Date Filed:* April 25, 2006.

d. *Applicant:* Alcoa Power Generating, Inc.

e. *Name of Project:* Yadkin Hydroelectric Project.

f. *Location:* On the Yadkin River, in Davidson, Davie, Montgomery, Rowan, and Stanly Counties, North Carolina. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gene Ellis, Licensing and Property Manager, Alcoa Power Generating, Inc., Yadkin Division, P.O. Box 576, North Carolina Highway 740, Badin, North Carolina 28009–0576; Telephone (704) 422–5606.

i. *FERC Contact:* Lee Emery, (202) 502–8379; or *lee.emery@ferc.gov.*

j. The deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Project description:* The existing Yadkin River Hydroelectric Project consists of four developments: High Rock, Tuckertown, Narrows, and Falls. The four developments are located on a 38-mile reach of the Yadkin River 60 miles northeast of Charlotte in central North Carolina. The High Rock development is the most upstream, with the Tuckertown, Narrows, and Falls developments 8.7, 16.5, and 19.0 miles downstream from the High Rock development, respectively. The four Yadkin developments have a combined installed capacity of 210 megawatts (MW). The project produces an average annual generation of 844,306 megawatt-hours (MWh).

The High Rock development includes the following constructed facilities: (1) A 936-foot-long, 101-foot-maximum height concrete gravity dam with (i) a 58-foot-long westerly non-overflow section, (ii) a 550-foot-long gated spillway with ten 45-foot-wide, 30-foot-high Stoney gates, and (iii) a 178-foot-long, 125-foot-high powerhouse integral with the dam containing three vertical Francis turbine-generating units with a total electric output of 32.2 MW; (2) a 14,400-acre reservoir at 623.9 feet U.S. Geological Survey (USGS) normal pool elevation, with 217,400 acre-feet of storage capacity; and (3) appurtenant facilities. Alcoa proposes to refurbish and upgrade all three generating units, install new aeration technology to increase dissolved oxygen concentration and enhance water quality in the High Rock tailwater, and revise the operating guide curve for the reservoir.

The Tuckertown development includes the following constructed facilities: (1) A 1,370-foot-long, 76-foot-maximum height concrete gravity dam with (i) a 45-foot-long rock filled section, (ii) a 178-foot-long right non-overflow section, (iii) a 481-foot-long gated spillway section with eleven 35-foot-wide by 38-foot-high Tainter gates, (iv) a 20-foot-long middle non-overflow section, (v) a 204-foot-long, 115-foot-high powerhouse integral with the dam containing three Kaplan turbine-generating units with a total electric output of 38 MW, (vi) a 100-foot-long left non-overflow section and (vii) a 342-foot-long rock filled section; (2) a 2,560-acre reservoir at 564.7 feet USGS normal pool elevation, with 6,700 acre-feet of storage capacity; and (3) appurtenant facilities. Alcoa proposes to refurbish and upgrade all three

generating units and install new aeration technology to increase dissolved oxygen concentration and enhance water quality in the Tuckertown development tailwater.

The Narrows development includes the following constructed facilities: (1) A 1,144-foot-long, 201-foot-maximum height concrete gravity dam with (i) a 366-foot-long non-overflow section, (ii) a 640-foot-long gated main spillway with twenty-two 25-foot wide by 12-foot-high Tainter gates, (iii) a 6-foot-long by 17-foot-high trash gate, (iv) a 128-foot-long intake structure with four 20-foot by 20-foot openings each with two vertical lift gates, (v) a 6-foot-long by 17-foot-high trash gate, (vi) a 431-foot-long bypass spillway with ten 33-foot-wide by 28-foot-high Stoney gates and (vii) a 90-foot-long non-overflow section; (2) a 5,355-acre reservoir at a normal pool elevation of 509.8 feet USGS with 129,100 acre-feet of storage capacity; (3) four 15-foot-diameter steel plate penstocks; (4) a 213-foot-long by 80-foot-wide reinforced concrete and brick powerhouse located 280 feet downstream of the dam and containing four vertical Francis turbine-generators with a total installed capacity of 108 MW; (5) a 13.2-kV transmission line approximately 1.9 miles long connecting the Narrows development with Alcoa's Badin Works; and (6) appurtenant facilities. Alcoa proposes to refurbish and upgrade generating units 1 and 3 and install new aeration technology to increase dissolved oxygen concentration and enhance water quality in the Narrows Development tailwater.

The Falls Development includes the following constructed facilities: (1) A 748-foot-long, 112-foot-maximum height concrete gravity dam consisting of: (i) A 189-foot-long, 130-foot-high powerhouse integral with the dam containing one vertical Francis turbine-generator and two Allis Chalmers vertical Propeller turbine-generators with a total installed capacity of 31 MW, (ii) a 14-foot-wide by 19-foot-high trash gate section, (iii) a 440-foot-long gated spillway with ten 33-foot-wide by 34-foot-high Stoney gates, (iv) a 71-foot-long Tainter gates section with one 25-foot-wide by 19-foot-high and a 25-foot-wide by 14-foot-high gate, and (v) a 34-foot-long non-overflow section; (2) a 204-acre reservoir at normal full pool elevation of 332.8 feet USGS, with 760 acre-feet of storage capacity; (3) a 100-kV transmission line approximately 2.7 miles long connecting the Falls development with Alcoa's Badin Works; and (4) appurtenant facilities. Alcoa proposes to refurbish and upgrade all three generating units and plans to install new aeration technology to increase dissolved oxygen concentration and enhance water quality in the Falls Development tailwater provided it will be deemed necessary in the future.

Alcoa proposes to continue operating the High Rock development in a store-and-release mode, and the Tuckertown, Narrows, and Falls developments in a run-of-river mode. The High Rock development provides storage for the downstream three developments. The Narrows development also provides some storage during low flow conditions and emergencies. The current average maximum annual drawdown for High Rock Reservoir is 12 to 15 feet, with drawdowns of 5 feet or less typical during the summer months. At the other developments, the maximum annual drawdown is 3 to 4 feet, with an average daily drawdown of up to 1 to 2 feet. Alcoa currently releases a weekly average minimum flow of 900 cfs from the Falls Development but has proposed to increase this minimum flow. Several other proposed modifications to the project include: (1) Revising the operating guide curve for High Rock reservoir; (2) building 10 new campsites and improving portage trails and access to existing recreation sites; and (3) creating a new swimming beach.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4991 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–030]

Carolina Power & Light Company; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 13, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2206–030.

c. *Date Filed:* April 26, 2006.

d. *Applicant:* Carolina Power & Light Company (d/b/a Progress Energy Carolinas, Inc.).

e. *Name of Project:* Yadkin-Pee Dee Hydroelectric Project.

f. *Location:* On the Yadkin and Pee Dee Rivers, in Montgomery, Stanly, Anson, and Richmond Counties, North Carolina. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* E. Michael Williams, Senior Vice President for Power Operations, Progress Energy, 410 S. Wilmington Street PEB 13, Raleigh, North Carolina 27602; Telephone (919) 546–6640.

i. *FERC Contact:* Stephen Bowler, (202) 502–6861; or *stephen.bowler@ferc.gov.*

j. The deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted and is ready for environmental analysis at this time.

l. The existing Yadkin-Pee Dee Project consists of the Tillery development on the Yadkin and Pee Dee Rivers and the Blewett Falls development on the Pee Dee River. The Yadkin Pee Dee project has an installed capacity of 108.6 megawatts (MW). The project produces an average annual generation of 326,000 megawatt-hours (MWh).

The Tillery development (at River Mile[RM] 218) includes the following existing facilities: (1) A 2,753-foot-long, 62-foot-maximum height dam with (i) A 1,200-foot-long earth dike, (ii) a 184-foot-long concrete west abutment, (iii) a 731-foot-long gated concrete gravity spillway with eighteen 34-foot-wide by 24-foot-high Tainter gates, (iv) a 14-foot-long by 10-foot-high trash sluice gate, (v) a 310-foot-long powerhouse integral with the dam containing three vertical Francis turbine-generators, one modified Kaplin-type turbine-generator, and one vertical Francis auxiliary turbine-generator with a total generating capacity of 84 MW, and (vi) a 310-foot-long concrete east abutment; (2) a 5,697-acre reservoir at normal pool elevation of 277.3 feet North American Vertical Datum of 1988 (NAVD 88), with 84,150 acre-feet of usable storage capacity; and (3) appurtenant facilities. The Tillery development would continue to be operated as a peaking facility with a typical drawdown of not more than 4 feet under normal conditions.

The Blewett Falls development (at RM 188.2) includes the following existing facilities: (1) A 3,168-foot-long dam with a 870-foot-long easterly earthen embankment, (i) 1,468-foot-long, 47 foot average height concrete ogee gravity spillway topped with four feet wooden flashboards, (ii) a 850-foot-long westerly earthen embankment, (iii) a 300-foot-long, approximately 100-foot-high concrete powerhouse containing six generating units (each unit driven by two horizontal shaft turbines with each turbine consisting of two runners) with a total generating capacity of 24.6 MW; (2) a 2,866-acre reservoir at normal pool elevation of 177.2 feet NAVD 88, with 30,893 acre-feet of usable storage capacity; (3) a 900-foot-long tailrace channel which reconnects to the Pee Dee River; and (4) appurtenant facilities. There is a 1,750-foot-long bypassed reach between the dam and where the tailrace channel enters the Pee Dee River.

Progress Energy proposes to continue operating the projects in the same operational mode. Several proposed modifications to the project include: (1) Making minor changes in reservoir elevations during the winter, under maintenance conditions, and during the largemouth bass spawning period; (2) increasing the minimum flow releases from the Tillery and Blewett Falls developments and using flow-shaping releases during fish spawning periods; (3) implementing fish passage measures, including trap and truck procedures and constructing eel passage facilities at the Blewett Falls development; (4) adopting a shoreline management policy for the Blewett Falls development; (5) improving recreational access, facilities, and trails, and closing the informal boating area below the Tillery development powerhouse and relocating it; and (6) constructing a new public boating access site on the east side of Blewett Falls reservoir.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4992 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: P–2237–017]

Georgia Power Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

March 13, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2237–017.

c. *Date Filed:* February 27, 2007.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Morgan Falls Hydroelectric Project.

f. *Location:* The existing project is located in the metropolitan city of Atlanta area on the Chattahoochee River, at river mile 312.6, and about 36 miles downstream from the U.S. Corps of Engineers' Buford dam (Lake Sidney Lanier) in Cobb and Fulton Counties, Georgia. The project occupies about 14.4 acres of federal lands within the Chattahoochee River National Recreation Area managed by the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Douglas E. Jones, Senior Vice-President, Southern Company Generation, 241 Ralph McGill Boulevard NE., Bin 10240, Atlanta, Georgia 30308–3374; Telephone (404) 506–7328; or George A. Martin, Project Manager, at (404) 506–1357 or e-mail at *gamartin@southernco.com.* Additional information on this project is available on the applicant's Web site: *http://www.southerncompany.com/gapower/hydro/.*

i. *FERC Contact:* Janet Hutzel, Telephone (202) 502–8675, or e-mail *janet.hutzel@ferc.gov.* Additional information on Federal Energy Regulatory Commission (FERC) hydroelectric projects is available on FERC's Web site: *http://www.ferc.gov/industries/hydropower.asp.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The existing project consists of the following: (1) A 1,031-foot-long, 56-foot-maximum height concrete gravity dam consisting of a 46-foot-long non-overflow westerly abutment; a 680-foot-long gated spillway with sixteen 40-foot-wide by 8-foot-tall Tainter gates; a 21-foot-long trash gate section containing one 8-foot-wide by 4-foot-tall trash gate; a 195-foot-long, 73-foot-high combined powerhouse and intake section integral with the dam containing seven horizontal double runner Francis turbines coupled to seven generating units with a total generating capacity of 16.8 megawatt; and an 89-foot-long non-overflow easterly abutment; (2) a 684-acre reservoir (Bull Sluice Lake) at normal full pool elevation of 866.0 feet using plant datum,[1] with 2,239 acre-feet of usable storage; and (3) appurtenant facilities. The average annual generation at the project is about 15,221 megawatt-hours. The applicant has no plans to modify the existing project facilities or the current modified run-of-river mode of operation.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Notice of Acceptance/ Notice of Ready for Environmental Analysis	May 13, 2007.[2]
Filing of interventions, recommendations, preliminary terms and conditions, and fishway prescriptions	July 12, 2007.
Reply comments due	August 26, 2007.
FERC issues single EA (without a draft)	November 9, 2007.
Comments on EA due	December 9, 2007.
Filing of modified terms and conditions	February 8, 2008.
Ready for Commission decision	May 8, 2008.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4993 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Plant datum = mean sea level (MSL) + 12.39 ft.

[2] This schedule assumes Georgia Power Company's license application conforms to the Commission's regulations and has no deficiencies under § 5.20.

[2] This schedule assumes Georgia Power Company's license application conforms to the Commission's regulations and has no deficiencies under § 5.20.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–169–000; Docket No. ER07–170–000]

Ameren Energy Marketing Company, Ameren Energy, Inc.; Notice Allowing Post-Technical Conference Comments

March 13, 2007.

Pursuant to the December 26, 2006 order in this proceeding, *Ameren Energy Marketing Co.,* 117 FERC ¶ 61,334 (2006), a staff technical conference was held on Tuesday, March 13, 2006 at the offices of the Federal Energy Regulatory Commission. The technical conference addressed issues related to potential affiliate abuse in the sale of ancillary services among Ameren affiliates.

Take notice that the Commission will accept post-technical conference comments. Initial comments are due no later than 5 p.m. Eastern Time on April 3, 2007. Reply comments are due no later than 5 p.m. Eastern Time on April 17, 2007.

For further information please contact Zeny Magos at (202) 502–8244 or e-mail *zeny.magos@ferc.gov.*

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4987 Filed 3–16–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OAR–2006–0894; FRL–8288–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Registration of Fuels and Fuel Additives: Requirements for Manufacturers (Renewal); EPA ICR No. 0309.12, OMB Control No. 2060–0150

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 18, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–OAR–2006–0894, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Office of Transportation and Air Quality, Mailcode: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2802; e-mail address: *caldwell.jim@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 17, 2006 (71 FR 40513), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–OAR–2006–0894, which is available for online viewing at *www.regulations.gov*, or in-person viewing at the Air and radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Registration of Fuels and Fuel Additives—Requirements for Manufacturers.

ICR numbers: EPA ICR No. 0309.12, OMB Control No. 2060–0150.

ICR Status: This ICR is scheduled to expire on March 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In accordance with the regulations at 40 CFR part 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives for those fuels, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR part 79, subpart F, is covered by a separate information collection. Manufacturers are also required to submit periodic reports (annually for additives, quarterly and annually for fuels) on production volume and related information. The information is used to identify products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. The information is also used to ensure that gasoline additives comply with EPA requirements for protecting catalytic converters and other automotive emission controls. The data have been used to construct a comprehensive data base on fuel and additive composition. Most of the information is confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average two hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of Fuels and Fuel Additives.

Estimated Number of Respondents: 1,050.

Frequency of Response: On Occasion, quarterly, annually.

Estimated Total Annual Hour Burden: 17,150.

Estimated Total Annual Cost: $1,372,000. This includes no annualized capital and $39,750 in O&M costs.

Changes in the Estimates: There is an increase of 2,340 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is the result of

an increase in the number of manufacturers producing fuels.

Dated: March 12, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–4928 Filed 3–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0740; FRL–8288–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Information Requirements for Importation of Nonconforming Vehicles (Renewal); EPA ICR No. 0010.11, OMB Control No. 2060–0095

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 18, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0740, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number: 734–214–4869; e-mail address: *sohacki.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 14, 2006 (71 FR 54280), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0740, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Information Requirements for Importation of Nonconforming Vehicles (Renewal).

ICR numbers: EPA ICR No. 0010.11, OMB Control No. 2060–0095.

ICR Status: This ICR is scheduled to expire on March 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Importers into the U.S. of light duty vehicles, light duty trucks, and on road motorcycles, or the corresponding engines, are required to report and keep records regarding the imports. The collection of this information is mandatory to insure compliance with Federal emissions requirements. Joint EPA and U.S. Customs Service regulations at 40 CFR 85.1501 *et seq.*, 19 CFR part 1273, and 19 CFR part 1774, promulgated under the authority of Clean Air Act sections 203 and 208, give authority for the collection of this information. The information is used by program personnel to ensure that all federal emissions requirements are met, and by state regulatory agencies, businesses, and individuals to verify whether vehicles are in compliance. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2), and the public is not permitted access to information containing personal or organizational identifiers.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.83 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Importers (including Independent Commercial Importers) of light duty vehicles or engines, light duty trucks or engines, and highway motorcycles or engines.

Estimated Number of Respondents: 12,005.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 10,216.

Estimated Total Annual Cost Burden: $1,169,545, including $736,000 in annualized capital costs, $1,780 in O&M costs, and $431,765 in labor costs.

Changes in the Estimates: There is a decrease of 5,584 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to use of revised estimates, based on actual counts, of the number of import forms submitted. There is a decrease in O&M costs of $1,264,220 and an increase in annualized capital costs of $736,000. These changes are due to the following: (1) The labor burden of recordkeeping has been adjusted and costed for the first time. These replace an O&M cost per form in the prior estimate. (2) The number of EPA Form 3520–8s has been increased from 200 to 352. The number of EPA Form 3520–1s has been reduced from 20,000 to 12,000 based on a better estimate due to the availability of a logged database. (The prior renewal listed 13,000 respondents filing 11,200 responses.) (3) The testing cost is modified to distinguish the different testing requirements for the two different classes of ICIs. (4) An O&M and a capital cost are assigned to the testing requirement, consistent with other certification ICRs, namely the EPA ICR 0783 series and (5) This testing O&M cost replaces a $660,000 O&M expense that was in the prior renewal.

Dated: March 12, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–4929 Filed 3–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0415; FRL–8289–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Lead Acid Battery Manufacturing (Renewal); EPA ICR Number 1072.08, OMB Control Number 2060–0081

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 18, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0415, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2006 (71 FR 35652), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA-HQ-OECA–2006–0415, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Lead Acid Battery Manufacturing (40 CFR part 60, subpart KK).

ICR Numbers: EPA ICR Number 1072.08, OMB Control Number 2060–0081.

ICR Status: This ICR is scheduled to expire on March 31, 2007. Under OMB regulations, the Agency may continue to conduct, or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct, or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register**, or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) renewal is being submitted for the NSPS for Lead Acid Battery Manufacturing (40 CFR part 60, subpart KK), which were promulgated on January 14, 1980. These regulations apply to the following affected facilities in lead-acid battery manufacturing plants with production capacity that is equal to, or exceeds 6.5 tons of lead: grid casting facilities, paste mixing facilities, three-process operation facilities, lead-oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations, commencing construction, modification, or reconstruction after the date of proposal. The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60 subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart KK.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62 hours per response. Burden means the total time, effort, or financial resources expended

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

Respondents/Affected Entities: Lead Acid Battery Manufacturers.

Estimated Number of Respondents: 52.

Frequency of Response: Initially and semi-annually.

Estimated Total Annual Hour Burden: 4,053.

Estimated Total Annual Cost: $ 261,933, which includes $ 0 capital startup costs, $ 12,000 annualized operating and maintenance (O&M) costs and $ 249,933 annual dollar costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: March 12, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–4930 Filed 3–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0080; FRL–8289–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Valuing Reduced Asthma Episodes for Adults and Children—Focus Groups; EPA ICR No. 2215.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 18, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2006–0080, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information (OEI) Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Chris Dockins, Office of Policy, Economics and Innovation, Environmental Protection Agency, Mail Code 1809T, 1200 Pennsylvania Ave. NW., Washington DC 20460; telephone number 202–566–2286; fax number 202–566–2338; e-mail address: *dockins.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 3, 2006 (71 FR 5834), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one non-substantial comment during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2006–0080, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information (OEI) Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at www.regulations.gov as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Valuing Reduced Asthma Episodes for Adults and Children—Focus Groups.

ICR numbers: EPA ICR No. 2215.01.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Asthma is one of the most common chronic illnesses in the United States, particularly among children. The disease is characterized by recurring episodes of symptoms like cough, shortness of breath, and wheezing. Epidemiological studies suggest that ambient air pollution may contribute to exacerbation of these episodes. Acute asthma episodes are a leading cause of work and school absence and contribute to the economic burden of the disease. The policies and programs of many public and private entities including EPA may affect the frequency and severity of asthma episodes, but economic analysis of these programs is hindered by inadequate information about the economic benefits of reduced asthma episodes. The proposed surveys would gather information to support estimation of willingness to pay (WTP) to avoid acute episodes of asthma exacerbation for adults and children.

The survey research has three main objectives. The first is to estimate WTP to reduce frequency of asthma episodes. The second is to examine how the ''attributes'' of asthma episodes, such as their frequency, severity and symptoms, affect WTP. The third is to provide some evidence on the WTP to reduce the severity of asthma episodes, while

holding frequency constant. WTP would be estimated in the context of the severity of the individual's asthma and the activities taken to manage the disease. The results will help to provide researchers and policy analysts with evidence on the potential benefits of actions policies that influence acute asthma episodes.

Through a cooperative agreement from EPA (R–83062801–0), researchers at the University of Central Florida (UCF) have designed and are proposing to conduct two surveys of adult individuals. One survey would be administered to a sample of adults with physician-diagnosed asthma who have experienced asthma symptoms during the 12 months preceding the survey. One survey focuses on eliciting adults' WTP to reduce the asthma episodes that they experience. A related survey would be administered to a sample of parents of children with physician-diagnosed asthma who have experienced asthma symptoms during the 12 months preceding the survey. In this case, the focus is on eliciting parents' WTP to reduce the asthma episodes that their children experience.

The purpose of the proposed ICR is to gain approval for the conduct of a series of focus groups and individual interviews as part of the survey development process. Focus groups and cognitive interviews are a crucial component in the survey development process as they allow survey developers to identify problematic approaches, terminology, and graphics in the survey instrument. A total of 50 interviews are anticipated, including focus group responses and individual interviews.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; 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.

The only burden imposed by the interviews on respondents will be the time required to participate in focus group discussions and answer interview questions. The survey developers estimate that this will require an average of 2 hours per respondent. With a total of 50 respondents this requires a total of 100 hours. Based on an average hourly rate of $27.31, including employer costs of all employee benefits, the survey developers expect that the average per-respondent cost for the pilot survey will be $54.62 and the corresponding one-time total cost to all respondents will be $2,731.00 (Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, total compensation, December 2006 *http://stats.bls.gov/news.release/ecec.t02.htm*). Since this information collection is voluntary and does not involve any special equipment, respondents will not incur any capital or operation and maintenance (O&M) costs.

Respondents/Affected Entities: Individuals or Households.

Estimated Number of Respondents: 50.

Frequency of Response: One-time.

Estimated Total Annual Hour Burden: 100.

Estimated Total Annual Cost: $2,731.00, includes $0 annualized capital or O&M costs.

Dated: March 12, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–4931 Filed 3–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0742; FRL–8289–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Motor Vehicle and Engine Compliance Program Fees (Renewal); EPA ICR No. 2080.03, OMB Control No. 2060–0545

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 18, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0742, to (1) EPA online using www.regulations.gov (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number: 734–214–4869; e-mail address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 14, 2006 (71 FR 54280), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0742, which is available for online viewing at www.regulations.gov, or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket and Information Center is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Motor Vehicle and Engine Compliance Program Fees (Renewal).

ICR numbers: EPA ICR No. 2080.03, OMB Control No. 2060–0545.

ICR Status: This ICR is scheduled to expire on March 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA charges user fees for administering its vehicle and engine certification programs. In 2004 the fees were extended to include certification applications for recently regulated categories of off-road vehicles and engines. Manufacturers and importers of covered vehicles and engines are required to pay the applicable certification fee prior to their certification applications being reviewed. This involves submitting payments along with a filing form identifying the engine family to be covered by the fee. There are also correction and refund forms. This ICR estimates the paperwork burden of submitting these fees and associated forms. This information collection covers the entire certification fees program, both on-road and off-road.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers or importers of passenger cars, motorcycles, light trucks, heavy duty truck engines, and non-road vehicles or engines required to receive a certificate of conformity from EPA prior to selling or introducing these products into commerce in the U.S.

Estimated Number of Respondents: 419.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 694.8.

Estimated Total Annual Cost: $46,198, including $11,028 in O&M costs and no startup or capital costs.

Changes in the Estimates: There is an increase of 65.8 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to use of actual counts, rather than projections, of fee forms submitted, and to an increase in the estimated time required to process reduced fee and refund requests.

Dated: March 12, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–4932 Filed 3–16–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 72 FR 10530, Thursday, March 8, 2007.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Thursday, March 15, 2007, 1 p.m. (Eastern Time).

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: March 15, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Seretariat.

[FR Doc. 07–1340 Filed 3–15–07; 2:53 pm]

BILLING CODE 6570–06–M

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 April 13, 2007.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. The Bank of New York Mellon Corporation, New York, New York; to become a bank holding company by acquiring and merging with The Bank of New York Company, Inc., New York, New York, and thereby indirectly acquire The Bank of New York, New York, New York; B.N.Y. Holdings (Delaware) Corporation, Newark, Delaware; The Bank of New York (Delaware), Newark, Delaware; Mellon Financial Corporation, Pittsburgh, Pennsylvania; Mellon Bank, N.A., Pittsburgh, Pennsylvania; Mellon United National Bank, Miami, Florida; Mellon 1st Business Bank, National Association, Los Angeles, California; and Mellon Trust of New England, N.A., Boston, Massachusetts.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. 1st Source Corporation, South Bend, Indiana; to acquire 100 percent of the voting shares of FINA Bancorp, Inc., Valparaiso, Indiana, and thereby indirectly acquire First National Bank of Valparaiso, Valparaiso, Indiana.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Belvedere SoCal, San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Professional Business Bank, Pasadena, California. In connection with this application, Belvedere Capital Partners II, LLC, and Belvedere Capital Fund II, LP, San Francisco, California, will indirectly acquire up to 58 percent of the voting shares of Professional Business Bank, Pasadena, California.

Board of Governors of the Federal Reserve System, March 14, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–4970 Filed 3–16–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. PSB Holding Corp., Preston, Maryland; to engage *de novo* through its subsidiary, Community Bank Mortgage Corporation, Easton, Maryland, in the origination and sale of residential mortgage loans to the secondary market, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 14, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–4971 Filed 3–16–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974: Report of Modified System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Modified System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify a SOR titled, ''Long Term Care-Minimum Data Set'' (MDS), System No. 09–70–1517, most recently modified at 67 FR 6714 (February 13, 2002). We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained information in the Health Care Financing Administration systems of records. The new identifying number for this system should read: System No. 09–70–0528.

We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We also propose to modify existing routine use number 3 that permits disclosure to Peer Review Organizations (PRO). The name of PROs has been changed to read: ''Quality Improvement Organizations (QIO).'' QIOs will continue work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. The modified routine use will remain as routine use number 3.

We will delete routine use number 6 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system is to aid in the administration of the survey and certification, and payment of Medicare Long Term Care services, which include skilled nursing facilities (SNFs), nursing facilities (NFs) SNFs/NFs, and hospital swing beds, and to study the effectiveness and quality of care given in those facilities. Information in this system will also be used to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) support Quality Improvement Organizations (QIO); (4) assist other insurers for processing individual insurance claims; (5) facilitate research on the quality and effectiveness of care provided, as well as payment related projects; (6) support litigation involving the Agency; (7) assist national accrediting organizations; and (8)

combat fraud, waste, and abuse in certain health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Dates:* CMS filed a modified system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 22, 2007. To ensure that all parties have adequate time in which to comment, the modified SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Tina Miller, Health Insurance Specialist, Division of Nursing Homes, Survey and Certification Group, Center for Medicaid and State Operations, CMS, Mail stop S2–12–25, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–6735 or e-mail *Tina.Miller@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis for System

Authority for maintenance of the system is given under §§ 1102(a), 1819(b) (3)(A), 1819(f), 1919(b)(3)(A), 1919(f), and 1864 of the Social Security Act.

B. Collection and Maintenance of Data in the System

The system contains information on residents in all long-term care facilities that are Medicare and/or Medicaid certified, including private pay individuals including but not limited to Medicare enrollment and entitlement, and Medicare Secondary Payer (MSP) data containing other party liability insurance information necessary for appropriate Medicare claim payment. The system also contains the individual's health insurance numbers, name, geographic location, race/ethnicity, sex, and date of birth, hospice election, premium billing and collection, direct billing information, and group health plan enrollment data.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MDS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only disclose the minimum personal data necessary to achieve the purpose of MDS.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to aid in the administration of the survey and certification, and payment of Medicare Long Term Care services, which include skilled nursing facilities (SNFs), nursing facilities (NFs) SNFs/NFs, and hospital swing beds, and to study the effectiveness and quality of care given in those facilities.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Modified Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MDS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We have provided a brief explanation of the routine uses we are proposing to establish or modify for disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give contractors, consultants, or grantees whatever information is necessary for contractors, consultants, or grantees to fulfill their duties. In these situations, safeguards are provided in the contract prohibiting contractors, consultants, or grantees from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To assist another Federal or state agency, agency of a state government, an

agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits.

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require MDS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

In addition, other state agencies in their administration of a Federal health program may require MDS information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

The Social Security Administration may require MDS data to enable them to assist in the implementation and maintenance of the Medicare program.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require MDS information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system.

3. To assist Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist state agencies and CMS intermediaries in program integrity assessments and preparation of summary information for release to CMS.

4. To assist insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, liability insurers, no-fault medical automobile insurers, workers compensation carriers or plans, other groups providing protection against medical expenses without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers may require MDS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

5. To support an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

MDS data will provide research, evaluations and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

6. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

7. To support a national accrediting organization whose accredited facilities are presumed to meet certain Medicare requirements for inpatient hospital (including swing beds) services; *e.g.*, the Joint Commission for the Accrediting of Healthcare Organizations (JCAHO). Information will be released to accrediting organizations only for those facilities that they accredit and that participate in the Medicare program.

CMS anticipates providing those national accrediting organizations with MDS information to enable them to target potential or identified problems during the organization's accreditation review process of that facility.

8. To assist a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the

contractor or grantee to fulfill the contractor or grantee duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

9. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require MDS information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent NIST publications; the HHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

V. Effect of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. CMS will only disclose the minimum personal data necessary to achieve the purposes of MDS. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a high level of security clearance for the information maintained in this system in an effort to provide added security and protection of data.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: February 22, 2007.

Charlene Frizzera,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

System No. 09–70–0528

SYSTEM NAME:

''Long Term Care-Minimum Data Set (MDS),'' Department of Health and Human Services (HHS)/Centers for Medicare & Medicaid Services (CMS)/ Center for Medicaid and State Operations (CMSO).

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and at various other remote locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on residents in all long-term care facilities that are Medicare and/or Medicaid certified, including private pay individuals including but not limited to Medicare enrollment and entitlement, and Medicare Secondary Payer (MSP) data containing other party liability insurance information necessary for appropriate Medicare claim payment.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system also contains the individual's health insurance numbers, name, geographic location, race/ ethnicity, sex, and date of birth, hospice election, premium billing and collection, direct billing information, and group health plan enrollment data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under of §§ 1102(a), 1819(b)(3)(A), 1819(f), 919(b)(3)(A), 1919(f), and 1864 of the Social Security Act.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to aid in the administration of the survey and certification, and payment of Medicare Long Term Care services, which include skilled nursing facilities (SNFs), nursing facilities (NFs) SNFs/ NFs, and hospital swing beds, and to study the effectiveness and quality of care given in those facilities. Information in this system will also be used to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) assist

another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) support Quality Improvement Organizations (QIO); (4) assist other insurers for processing individual insurance claims; (5) facilitate research on the quality and effectiveness of care provided, as well as payment related projects; (6) support litigation involving the Agency; (7) assist national accrediting organizations; and (8) combat fraud, waste, and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. Entities Who May Receive Disclosures under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MDS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We have provided a brief explanation of the routine uses we are proposing to establish or modify for disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits.

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

4. To assist insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, liability insurers, no-fault medical automobile insurers, workers compensation carriers or plans, other groups providing protection against medical expenses without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

5. To support an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

6. To assist the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

7. To support a national accrediting organization whose accredited facilities are presumed to meet certain Medicare requirements for inpatient hospital (including swing beds) services; *e.g.*, the Joint Commission for the Accrediting of Healthcare Organizations (JCAHO). Information will be released to accrediting organizations only for those facilities that they accredit and that participate in the Medicare program.

8. To assist CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

9. To support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Circumstances Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

All Medicare records are accessible by HIC number or alpha (name) search. This system supports both online and batch access.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent NIST publications; the HHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

• ''Records will be retained until an approved disposition authority is obtained from the National Archives and Records Administration.''

SYSTEM MANAGER AND ADDRESS:

Director, Survey and Certification Group, Center for Medicaid and State Operations, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some MSP situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Railroad Retirement Board, and the Master Beneficiary Record maintained by the Social Security Administration.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–4889 Filed 3–16–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary of Health and Human Services under 21 CFR 50.54 and 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services, when that research is also regulated by FDA.

Date and Time: The meeting will be held on April 11, 2007, from 4 p.m. to 6 p.m.

Location: Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Carlos Pena, Office of Science and Health Coordination, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, rm. 14B–08), Rockville, MD 20857, 301–827–3340, e-mail: *Carlos.Pena@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up to date information on this meeting.

Agenda: The Pediatric Advisory Committee will hear and discuss reports by the agency, as mandated in section 17 of the Best Pharmaceuticals for Children Act, on adverse event reports for fluvastatin (LESCOL) and octreotide (SANDOSTATIN). The committee will also receive updates to adverse event reports for orlistat (XENICAL) and oxybutynin (DITROPAN) which were requested by the Pediatric Advisory Committee when the reports were first presented.

FDA intends to make background material available to the public no later than 1 business day before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written

submissions may be made to the contact person on or before March 28, 2007. Oral presentations from the public will be scheduled between approximately 4 p.m. to 5 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before by March 20, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open pubic hearing session. The contact person will notify interested person regarding their request to speak by March 21, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Carlos Pena at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 8, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–4877 Filed 3–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0080]

Draft Guidance for Industry on Indexing Structured Product Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Indexing Structured Product Labeling.'' This guidance explains that the Center for Drug Evaluation and Research (CDER) will index structured product labeling (SPL) in the product labeling for human drugs. This guidance also makes recommendations to industry on how to request a change to the indexing information in the SPL.

DATES: Submit written or electronic comments on the draft guidance by June 18, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Laurie Burke, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6462, Silver Spring, MD 20993–0002, *laurie.burke@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Indexing Structured Product Labeling.'' This guidance explains that FDA's CDER will index SPL in the product labeling for human drugs. This guidance also makes recommendations to industry on how to request a change to the indexing information in the SPL.

A Health Level Seven (HL7)[1] standard, SPL is used for electronically exchanging the content of labeling and other regulated product information using the extensible markup language. The SPL standard enables the inclusion of indexing elements with product labeling. These machine-readable identifiers enable users, such as clinical decision support tools and electronic prescribing systems, to rapidly search and sort product information found in product labels. Indexing the SPL will greatly facilitate the efficient communication of important drug information to the public, helping create a more robust nationwide system for promoting the safe and effective use of drugs.

After completing a 6-month pilot project evaluating how best to add indexing elements, FDA determined that the most efficient strategy is for FDA, not individual applicants, to index the SPL using a phased approach. We will index the pharmacological class during the first phase. We are adding pharmacologic class first because: (1) It is important for the safe use of drugs, (2) it is necessary for making future indexing meaningful (e.g., drug interactions), and (3) this choice leverages existing FDA resources. After pharmacologic class, we will be seeking public input on which indexing elements should be added in future phases.

The draft guidance also recommends that applicants submit any questions regarding existing indexing, including any requests to add or revise an indexing element, to CDER (*spl@fda.hhs.gov*). Inquiries and requests will be forwarded to the appropriate FDA personnel who will consider them and make the appropriate change in the SPL.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on indexing SPL. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or*http://www.fda.gov/ohrms/dockets/default.htm.*

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[1] See *http://www.hl7.org*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Dated: March 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–4881 Filed 3–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–27492]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC), its Subcommittees on Hazardous Cargo Transportation Security (HCTS), the National Fire Protection Association (NFPA) 472 Standard, and Outreach, as well as its Working Group on Barge Hazard Communication will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: Both the Subcommittee on Outreach and the Working Group on Barge Hazard Communication will meet on Tuesday, April 10, 2007, from 8 a.m. to 12 p.m. and the NFPA 472 Subcommittee will meet on Tuesday, April 10, 2007, from 12:30 p.m. to 4:30 p.m. The NFPA 472 Subcommittee will meet on Wednesday, April 11, 2007, from 8 a.m. to 12 p.m. and the Subcommittee on HCTS will meet on Wednesday, April 11, 2007, from 12:30 p.m. to 4:30 p.m. CTAC will meet on Thursday, April 12, 2007, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 3, 2007. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before April 3, 2007.

ADDRESSES: The meetings of the Subcommittees on Outreach, NFPA 472 and HCTS and the Working Group on Barge Hazard Communication will be held at the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. The CTAC meeting will be held at the Boston Marriott Quincy, 1000 Marriott Drive, Quincy, MA 02269. Send written material and requests to make oral presentations to Commander Richard Raksnis, Executive Director of CTAC, Commandant (CG–3PSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 or E-mail: *CTAC@comdt.uscg.mil.* This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Richard Raksnis, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–372–1425, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of the Outreach Subcommittee Meeting on Tuesday, April 10, 2007

(1) Introduce Subcommittee members and attendees.

(2) Finalize the poster presentation for the Responsible Care Conference in May, 2007.

(3) Discuss outreach efforts on issues of barge emissions and vapor control systems.

Agenda of the Barge Hazard Communication Working Group, April 10, 2007

(1) Introduce Working Group members and attendees.

(2) Draft letter for voluntary compliance with the 24-hour contact number.

(3) Develop future Working Group plans.

Agenda of the NFPA 472 Subcommittee Meeting on Tuesday, April 10, 2007

(1) Introduce Subcommittee members and attendees.

(2) Complete first draft of proposed chapter describing competencies of responders to marine non-tank vessel incidents, for future incorporation into the NFPA 472 Standard, *Professional Competence of Responders to Hazardous Materials Incidents.*

Agenda of the NFPA 472 Subcommittee Meeting on Wednesday, April 11, 2007

(1) Introduce Subcommittee members and attendees.

(2) Begin work on second draft of chapter describing competencies of responders to marine non-tank vessel incidents.

(3) Discuss future plans for the Subcommittee.

Agenda of the Subcommittee on Hazardous Cargo Transportation Security (HCTS) on Wednesday, April 11, 2007

(1) Introduce Subcommittee members and attendees.

(2) Discussion on updates to the Maritime Transportation Security Act (MTSA) regulations.

(3) Discuss Coast Guard Certain Dangerous Cargo (CDC) security project.

Agenda of CTAC Meeting on Thursday, April 12, 2007

(1) Introduce Committee members and attendees.

(2) Status report presentation from the CTAC HCTS Subcommittee to include discussion and vote on comments to the MTSA regulations.

(3) Status report presentation from the CTAC Outreach Subcommittee.

(4) Status report presentation from the CTAC Barge Hazard Communication Working Group.

(5) Status report presentation from the CTAC MARPOL Annex II Working Group.

(6) Status report presentation from the NFPA 472 Subcommittee.

(7) Presentation on the Transportation Worker Identification Credential (TWIC) Program.

(8) Presentation on the Marine Chemist Program.

(9) Presentation on LNG deepwater port issues.

(10) Update on Coast Guard regulatory projects.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings generally limited to five minutes. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before April 3, 2007. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (see **ADDRESSES**) no later than April 3, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: March 8, 2007.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. E7–4935 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day notice of information collection under review: Form N–455, Application for Transfer of Petition for Naturalization; OMB Control No. 1615–0055.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 18, 2007.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0055 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved information collection.

(2) *Title of the Form/Collection:* Application for Transfer of Petition for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–455. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form is provided by USCIS for use by a petitioner for naturalization to request a transfer of his or her application from one court to another court. USCIS will also use this form to make a recommendation to the court.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 10 minutes (.166) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard Sloan, Chief, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, telephone number 202–272–8377.

Dated: March 14, 2007.

Richard A. Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–4947 Filed 3–16–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of an Existing Information Collection; Comment Request

ACTION: 60-Day notice of information collection under review: Form I–643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status; OMB Control No. 1615–0070.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 18, 2007.

Written comments and suggestions regarding the item(s) contained in this notice, and especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0070 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–643. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. Refugees and asylees, Cuban/Haitian Entrants under section 202 of Public Law 99–603, and Amerasians under Public Law 97–359, must use this form when applying for adjustment of status, with the U.S. Citizenship and Immigration Services (USCIS). USCIS will provide the data collected on this form to the Department of Health and Human Services (HHS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 178,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529; Telephone No. 202–272–8377.

Dated: March 14, 2007.

Richard Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–4948 Filed 3–16–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–04]

Announcement of Funding Awards for the Rural Housing and Economic Development Program Fiscal Year 2006

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Rural Housing and Economic Development Program. This announcement contains the names of the awardees and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Jackie L. Williams, Ph.D., Director, Office of Rural Housing and Economic Development, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7137, Washington, DC 20410–7000; telephone (202) 708–2290 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, call Community Connections at (800) 998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Rural Housing and Economic Development program was authorized by the Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1999. The competition was announced in the NOFA published March 8, 2006 (71 FR 11903). Applications were rated and selected for funding on the basis of selection criteria contained in that notice.

The Catalog of Federal Domestic Assistance number for this program is 14.250.

The Rural Housing and Economic Development Program is designed to build capacity at the State and local level for rural housing and economic development and to support innovative housing and economic development activities in rural areas. Eligible applicants are local rural non-profit organizations, community development corporations, federally recognized Indian tribes, state housing finance agencies, and State community and/or economic development agencies. The funds made available under this program were awarded competitively, through a selection process conducted by HUD.

For the Fiscal Year 2006 competition, a total of $16,800,000 was awarded to 56 projects nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: February 22, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A—Fiscal Year 2006 Funding Awards for Rural Housing and Economic Development Program

Recipient	City	State	Award
Rural Alaska Community Action Program, Inc	Anchorage	AK	300,000
Chilkot Indian Association	Haines	AK	300,000
Asa'carsarmiut Tribal Council	Mountain Village	AK	300,000
Organized Village of Kasaan	Ketchikan	AK	300,000
Hale Empowerment and Revitalization Organization	Greensboro,	AL	300,000
Volunteers of America Southeast, Inc.	Mobile	AL	300,000
International Sonoran Desert Alliance	Ajo	AZ	300,000
Elfrida Citizens' Alliance	Elfrida	AZ	300,000
West Fresno Coalition for Economic Development	Fresno	CA	300,000
Relational Culture Institute	Fresno	CA	300,000
Shingle Springs Rancheria	Shingle Springs	CA	300,000
Better Opportunities Builders, Inc.	Fresno	CA	300,000
Bear River Band of Rohnerville Rancheria	Loteta	CA	300,000
Huerfano/Las Aminas Area COG	Trinidad	CO	300,000
Everglades Community Association	Florida	FL	300,000
Southwest Georgia United Empowerment Zone, Inc	Vienna	GA	300,000
Area Committee to Improve Opportunities, NOW	Athens	GA	300,000
CDC of Southwest Georgia	Colquitt	GA	300,000
Youthbuild McLean County	Bloomington	IL	300,000

Recipient	City	State	Award
Shawnee Development Council, Inc.	Karnak	IL	300,000
Purchase Area Housing Corporation	Mayfield	KY	300,000
Passamaquoddy Development and Supply, Co	Parry	ME	300,000
Community Action Agency of South Central Michigan	Battle Creek	MI	300,000
Little River Band of Ottawa Indians	Manistee	MI	300,000
Mid-Delta Empowerment Zone Alliance	Itta Bena	MS	300,000
Fort Peck Assiniboini and Sioux Tribes	Poplar	MT	300,000
The Heritage Institute	Glasgow	MT	300,000
Omaha Tribe of Nebraska	Macy	NE	300,000
Santee Sioux Tribe of Nebraska	Niobrara	NE	300,000
Ho-Chunk Community Development Corporation	Walthill	NE	300,000
Navajo Partnership for Housing, Inc.	Gallup	NM	300,000
Native American Lending Group, Inc.	Albuquerque	NM	300,000
Eastern Plains Housing Development Corporation	Clovis	NM	300,000
ACCION, New Mexico	Alburquerque	NM	300,000
The Dona Anna County Colonias Development Council	Las Cruces	NM	300,000
Pueblo of Picuris	Penasco	NM	300,000
Pueblo De San Lidefonso	Sante Fe	NM	300,000
Pueblo of Pojoaque	Sante Fe	NM	300,000
Fallon Paiute Shoshone Tribe	Fallon	NV	300,000
Cortland Housing Assistance Council, Inc.	Cortland	NY	300,000
Haliwa-Saponi Indian Tribe	Hollister	NC	300,000
Turtle Mountain Band of Chippewa Indians	Belcourt	ND	300,000
Northeast South Dakota Community Action Program	Sisseton	SD	300,000
Oglala Sioux Tribe Partnership for Housing	Pine Ridge	SD	300,000
The Lakota Fund	Kyle	SD	300,000
Buffalo Valley, Inc.	Hohewald	TN	300,000
Creative Compassion, Inc.	Crossville	TN	300,000
West Tennessee Legal Services, Inc.	Jackson	TN	300,000
Community Development Corporation of Brownsville	Brownsville	TX	300,000
El Paso Empowerment Zone Corporation	El Paso	TX	300,000
Community Development Corporation Of South Texas	McAllen	TX	300,000
Organizacion Progresiva de San Elizario	San Elizario	TX	300,000
Proyecto Azteca	San Juan	TX	300,000
Willacy County Industrial Foundation, Inc.	Raymondville	TX	300,000
Southern Appalachian Labor School	Kincaid	WV	300,000
Stop Abusive Family Environments, Inc.	Welch	WV	300,000

[FR Doc. E7–4880 Filed 3–16–07; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Comprehensive Conservation Plans and Environmental Assessments for Mandalay and Bayou Teche National Wildlife Refuges in South Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to gather information necessary to prepare comprehensive conservation plans and environmental assessments pursuant to the National Environmental Policy Act and its implementing regulations for Mandalay and Bayou Teche National Wildlife Refuges in Terrebonne and Saint Mary Parishes, Louisiana. Mandalay and Bayou Teche Refuges are two of the eight refuges administered by the Southeast Louisiana National Wildlife Refuge Complex. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Please provide written comments on the scope of issues to include in the environmental documents by May 18, 2007.

ADDRESSES: Address comments, questions, and requests for further information to the following: Charlotte Parker, Natural Resource Planner, Southeast Louisiana National Wildlife Refuge Complex, 61389 Highway 434, Lacombe, Louisiana 70445; Telephone: 985–882–2000. Comments may also be submitted electronically to *Charlotte_Parker@fws.gov*.

SUPPLEMENTARY INFORMATION: Open house style public scoping meetings will be held in Houma and Franklin during the comprehensive conservation plan development phase. Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the opportunities for input throughout the planning process. Many elements will be considered, including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into the planning process is essential. All comments received become part of the official public record. Requests for such

comments will be handled in accordance with the Freedom of Information Act and other Service and Departmental policies and procedures.

Mandalay National Wildlife Refuge, established in 1996, is in Terrebone Parish in southeast Louisiana. The 4,212-acre refuge is composed of freshwater marsh and cypress-tupelo swamp. The refuge provides excellent habitat for waterfowl, wading birds, and neotropical migratory songbirds.

Bayou Teche National Wildlife Refuge, established in 2001, is in Saint Mary Parish in southeast Louisiana. The 19,113-acre refuge is composed of bottomland hardwood and cypress-gum forests. The refuge provides habitat for the threatened Louisiana black bear, as well as high-quality habitat for migratory birds.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: December 19, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–4911 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Announcement of Fund Availability, Competitive Grant Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: This notice informs Indian tribes that grant funds are available through a Competitive Grant Program and that the Office of Indian Energy and Economic Development (IEED) is soliciting applications from eligible interested entities. To encourage greater tribal participation in this initiative, IEED is offering grants to assist federally-recognized Indian tribes in preparing tribal plans designed for participation in Public Law 102–477.

DATES: Applications must be received on or before April 18, 2007. Applications received after this date will not be considered.

ADDRESSES: Mail or hand deliver applications to: Office of Indian Energy and Economic Development, *Attention:* Lynn Forcia, Chief, Division of Workforce Development, Mail Stop 20–SIB, 1951 Constitution Avenue, NW., Washington, DC 20245. Potential applicants should fax a request for a copy of the guidance to (202) 208–6991.

FOR FURTHER INFORMATION CONTACT: Lynn Forcia, (202) 219–5270 or Jody Garrison, (202) 208–2685.

SUPPLEMENTARY INFORMATION: This solicitation consists of six parts.

- Part I provides the funding description and background information.
- Part II describes the selection criteria.
- Part III provides the form and content of application submission.
- Part IV provides application review information.
- Part V provides information for selection and non-selection of applicants for award.
- Part VI describes the authority which grants this solicitation for applications for this grant.

I. Background

Congress enacted Public Law 102–477 (477) on October 23, 1992, with full tribal participation, and it was implemented on January 1, 1994. The 477 initiative is a program that enables tribes to consolidate Federal funds and devote up to 25 percent of their total resources for economic development projects. The 477 Tribal Work Group, composed of existing grantees, has provided training for tribes wishing to participate in this program.

Independent studies, congressional testimony, the Office of Management and Budget's PART review, and 477 participating tribes have all recognized 477 as an innovative and successful program of benefit to tribes. However, the program has grown slowly over the past 12 years. Many tribes not a part of 477 have lacked the opportunity to determine whether their participation in this program would be suitable for their communities.

To encourage greater tribal participation in this highly successful initiative, the Office of Indian Energy and Economic Development (IEED) is offering grants to assist tribes to develop 477 plans. A limited number of tribal grantees chosen, on a competitive basis, will be provided funding up to $25,000 to develop a 477 plan, which will meet statutory requirements.

II. Selection Criteria

IEED will select applicants for the grant funding based upon the following criteria:

- 40 percent need—the tribe's demonstration that it lacks resources necessary to prepare a plan;
- 30 percent—the extent to which the tribal staff responsible for implementation of the program will have been involved in the preparation of a plan; and
- 30 percent—the extent to which job creation and/or job accessibility activities are planned.

In order to be considered eligible for consideration, tribes must document successful audits for the past 2 years.

III. Form and Content of Application Submission

All applications must contain the following information or documentation:

(1) Standard Form 424, Application for Financial Assistance.

(2) Budget not to exceed $25,000, which identifies proposed expenses (1–2 pages).

(3) Narrative (not to exceed 5 pages) which—

(a) Identifies the Federal programs the tribe intends to incorporate into the 477 plan, with estimated funding levels;

(b) Explains the tribe's need for financial assistance to prepare a plan;

(c) States why the tribe intends to participate in Public Law 102–477 and the expected measurable outcome; and,

(d) Provides the contact person's name, address, and fax and telephone numbers.

(4) One copy of the single audit for the past 2 years, if tribe is required to complete audits.

IV. Application Review Information

Within 30 days of receiving the application, IEED will acknowledge receipt by letter to the applicant. The application will be reviewed for completeness to determine if it contains all of the items required. If the application is incomplete or ineligible, it will be returned to the applicant with an explanation from the Division of Workforce Development.

A review team will evaluate all applications and make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria under the heading ''Selection Criteria.'' All applications that are complete and eligible will be ranked competitively based on the criteria under the heading ''Form and Content of Application Submission.''

V. Notification of Selection/Non-Selection

Those tribes selected to participate will be notified by letter. Tribes will be notified within 60 days of the application deadline. Upon notification, each tribe selected will be awarded a grant.

The Chief, Division of Workforce Development will notify each tribe of non-selection.

VI. Authority

This notice is published in accordance with Public Law 102–477 and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: March 7, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–4953 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Amendment.

SUMMARY: This notice publishes an approval of the amendment to the Tribal-State Compact for regulation of Class III gaming between the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon.

DATES: *Effective Date:* March 19, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment expands the distribution of the funds in the Fund Administration to the tribes' political subdivisions and clarifies that local government bodies includes school districts and individual schools.

Dated: March 7, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–4905 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: This notice publishes approval of the compact between the Sovereign Indian Nation of the Omaha Tribe of Nebraska and the Sovereign State of Iowa.

DATES: *Effective Date:* March 19, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State Compacts for the purpose of engaging in class III gaming activities on Indian lands. This compact allows for the extension of the current compact and clarifies the regulatory scheme.

Dated: March 7, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary-Indian Affairs.

[FR Doc. E7–4904 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes an approval of the Tribal-State Gaming Compact for regulation of Class III gaming between the Cow Creek Band of Umpqua Tribe of Indians and the State of Oregon.

DATES: *Effective Date:* March 19, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This compact establishes regulatory, oversight and monitoring roles between the parties. The division of regulatory, oversight and monitoring roles in this compact reserves for the tribe the primary responsibility for regulating Class III gaming on tribal land; however, this compact provides the State of Oregon, acting through the Oregon State Police, with important monitoring and oversight responsibilities to assure the fairness, integrity, security and honesty of the Class III gaming.

Dated: March 7, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–4903 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–07–1910–BJ–5GEV]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Cheyenne River Agency, through the Great Plains Regional Director, Bureau of Indian Affairs and was necessary to determine Trust and Tribal lands.

The lands we surveyed are:

Black Hills Meridian, South Dakota

T. 8 N., R. 23 E.

The plat, in 2 sheets, representing the dependent resurvey of a portion of the Second Standard Parallel North, through Range 23 East, a portion of the subdivisional lines, a portion of the subdivision of section 5, a portion of the

adjusted 1931 meanders of the left bank of the Cheyenne River, downstream, through sections 2 and 5, and the survey of portions of the meanders of the present left bank of the Cheyenne River, downstream, through sections 2 and 5, and certain division of accretion lines, in Township 8 North, Range 23 East, Black Hills Meridian, South Dakota, was accepted March 7, 2007.

We will place copies of the plat only, in 2 sheets, we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in 2 sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in 2 sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: March 9, 2007.

Michael T. Birtles,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. E7–4910 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–07–1910–BJ–5GKW]

Notice of Filing of Plats of Survey, Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Nebraska.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plats and field notes representing the dependent resurvey of portions of the Sixth Standard Parallel North, through Range 10 East, the east and west boundaries, the subdivisional lines, the subdivision of section lines, and the original 1867 meander line of the right bank of the Missouri River, the corrective dependent resurvey of portions of the Sixth Standard Parallel North, through Range 10 East, the subdivisional lines, and the subdivision of section lines, and the survey of the subdivision of certain sections, Township 24 North, Range 10 East, of the Sixth Principal Meridian, Nebraska, was accepted March 8, 2007.

Copies of the preceding described plat and field notes are available to the public at a cost of $1.10 per page.

Dated: March 12, 2007.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. E7–4922 Filed 3–16–07; 8:45 am]

BILLING CODE 4467–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–07–1420–BJ]

Notice of Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on the dates indicated.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management, and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, Township 50 North, Range 79 West, Sixth Principal Meridian, Wyoming, Group No. 748, was accepted and filed November 17, 2006.

The plat and field notes representing the dependent resurvey of the east boundary, a portion of the north boundary and a portion of the subdivisional lines, Township 51 North, Range 79 West, Sixth Principal Meridian, Wyoming, Group No. 750, was accepted and filed November 17, 2006.

The plat that represents the entire record of the survey of a portion of the boundary between the Grand Teton National Park and the Bridger-Teton National Forest, along the hydrographic divide as defined by Congressional Act, February 26, 1929, Public Law 70–817, within the unsurveyed portion of Township 42 North, Range 117 West, Sixth Principal Meridian, Wyoming, Group No. 764, was accepted and filed January 31, 2007.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: March 13, 2007.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. E7–4923 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (1010–0006).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 256, ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by April 18, 2007.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for the Department of the Interior via OMB *e-mail:* (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with (1010–0006).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the Web site for submitting comments.

• E-mail MMS at *rules.comments@mms.gov.* Use Information Collection Number 1010–0006, in the subject line.

• *Fax:* 703–787–1093. Identify with Information Collection Number 1010–0006.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; *Attention:* Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0006'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the ICR, the forms, and the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 256, ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.''

OMB Control Number: 1010–0006.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Also, the Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213(c)).

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, the Minerals Management Service (MMS) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and MMS regulations specify the filing fee for these transfer applications.

These authorities and responsibilities are among those delegated to the MMS under which we issue regulations governing oil and gas and sulphur operations in the OCS. This information collection request (ICR) addresses the regulations at 30 CFR 256, Leasing of Sulphur or Oil and Gas in the OCS, and the associated supplementary Notices to Lessees (NTLs) and operators intended to provide clarification, description, or explanation of these regulations.

Responses are required to obtain or retain a benefit. No questions of a ''sensitive'' nature are asked. The individual responses to Calls for Information are the only information collected involving the protection of confidentiality. The MMS will protect specific individual replies from disclosure as proprietary information according to section 26 of the OCS Lands Act, the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and § 256.10(d).

The MMS uses the information required by 30 CFR part 256 to determine if applicants are qualified to hold leases in the OCS. Specifically, MMS uses the information to:

• Verify the qualifications of a bidder on an OCS lease sale. Once the required information is filed with MMS, a qualification number is assigned to the bidder so that duplicate information is not required on subsequent filings.

• Develop the semiannual List of Restricted Joint Bidders. This identifies parties ineligible to bid jointly with each other on OCS lease sales, under limitations established by the EPCA.

• Ensure the qualification of assignees and track operators on leaseholds. Once a lease is awarded, the transfer of a lessee's interest to another qualified party must be approved by an MMS regional director, regional supervisor, or regional manager (Pacific Region only). Also, a lessee may designate an operator to act on the lessee's behalf. This designation must be approved by MMS before the designated operator may begin operations.

• Document that a leasehold or geographical subdivision has been surrendered by the record title holder.

The MMS will use this information to update the corporate database which is used to determine what leases are available for a lease sale and the ownership of all OCS leases. Non-proprietary information is also publicly available from the MMS corporate database via the Internet.

The MMS uses the information required by subpart J, Assignments, Transfers and Extensions, to track the ownership of leases as to record title, operating rights, and pipeline right-of-ways.

The MMS also uses various forms relating to this subpart—forms to process bonds per subpart I, Bonding, the transfer of interest in leases per subpart J, Assignments, Transfers and Extensions, and the filing of relinquishments per subpart K, Termination of Leases. The forms allow lessees to submit the required information in a standardized format that helps MMS process the data in a more timely and efficient manner. The forms are:

• MMS–150, Assignment of Record Title Interest in Federal OCS Oil and Gas Lease,

• MMS–151, Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease,

• MMS–152, Relinquishment of Federal OCS Oil and Gas Lease.

• MMS–2028, OCS Mineral Lessee's and Operator's Bond,

• MMS–2028A, OCS Mineral Lessee's and Operator's Supplemental Plugging and Abandonment Bond,

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 256 respondents (Federal oil and gas or sulphur lessees).

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 17,058 hours. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR Part 256	Reporting requirement	Fees		
		Hour burden	Average No. of annual responses	Annual burden hours
Subparts A, C, E, H, L, M	None	Not applicable		0
Subparts G, H, I, J: 37; 53; 68; 70; 71; 72; 73.	Request approval for various operations or submit plans or applications.	Burden included with other approved collections in 30 CFR Part 250 (1010–0114, 1010–0141, 1010–0142, 1010–0149, 1010–0151)		0
Subpart B: All sections	Submit suggestions and relevant information in response to request for comments on proposed 5-year leasing program, including information from States/local governments.	4	1 response	4
Subpart D: All sections	Submit response to Call for Information and Nominations on areas for leasing of minerals in specified areas in accordance with an approved leasing program, including information from States/local governments.	4	1 response	4
Subpart F: 31	States or local governments submit comments/recommendations on size, timing or location of proposed lease sale.	4	10 responses	40
Subpart G: 35; 46(d), (e)	Establish a Company File for qualification; submit updated information, submit qualifications for lessee/bidder, request exception.	2	104 responses.	208
41; 43; 46(g)	Submit qualification of bidders for joint bids and statement or report of production/appeal.	2	100 responses.	200
44; 46	Submit bids and required information	5	2,000 bids	10,000
47(c)	File agreement to accept joint lease on tie bids	3 1/2	2 agreements	7
47(e)(1), (e)(3)	Request for reconsideration of bid rejection	Exempt as defined in 5 CFR 1320.3(h)(9)		0
47(f), (i); 50	Execute lease (includes submission of evidence of authorized agent and request for dating of leases).	1	852 leases	852
Subpart I: 52(f)(2), (g)(2)	Submit authority for Regional Director to sell Treasury or alternate type of securities.	2	10 submissions.	20
53(a), 53(b); 54	OCS Mineral Lessee's and Operator's Bond (Form MMS–2028).	1/4	124 responses.	31
53(c), (d), (f); 54(d), 54(e)	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required.	3 1/2	165 submissions.	[1] 578
54	OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond (Form MMS–2028A).	1/4	136 responses.	34
55	Notify MMS of any lapse in previous bond/action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	1	3 notices	3
56	Provide plan/instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds.	12	1 submission	12
57	Provide third-party guarantee, indemnity agreement, financial information, related notices, reports, and annual update; notify MMS if guarantor becomes unqualified.	19	45 submissions.	855
57(d)(3); 58	Notice of and request approval to terminate period of liability, cancel bond, or other security.	1/2	378 requests	189
59(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16	5 responses	80
Subpart J: 62; 63; 64; 65; 67	File application and required information for assignment or transfer for approval (Forms MMS–150 and MMS–151).	2 forms @ 30 min ea = 1 hr.	3,000 applications.	3,000
		3,000 Title/Rights (Transfer) fee @ $170 = $510,000		
63; 64(a)(8)	Submit non-required documents, for record purposes, which respondents want MMS to file with the lease document.	Accepted on behalf of lessees as a service, MMS does not require nor need the filings		0
		3,725 filing fees @ $25 ea = $93,125		
64(a)(7)	File required instruments creating or transferring working interests, etc., for record purposes.	1	700 filings	700
Subpart K: 76	File written request for relinquishment (Form MMS–152)	1/2	240 relinquishments.	120
77(c)	Comment on lease cancellation (MMS expects 1 in 10 years)	1	1	1
Total Reporting		7,878 Responses		17,058 Hours
		$603,125 Fees		

[1] (Rounded).

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are two non-hour costs associated with this information collection. The estimated non-hour cost burden is $603,125. Sections 256.62 and 256.64(a) require respondents to pay filing fees when submitting a request for assignment or transfer, and to file documents for record purposes. The application filing fees are required to recover the Federal Government's processing costs. We have not identified any other ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on August 16, 2006, we published a **Federal Register** notice (71 FR 47243) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 256.0 and the PRA statement on the MMS forms display the OMB control number, specifies that the public may comment at anytime on the collection of information required in the 30 CFR part 256 regulations and forms, and provides the address to which they should send comments. We have received one comment in response to those efforts, but it was not germane to the paperwork burden of the information collection.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 18, 2007.

Public Comment Procedures: The MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. The MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of privacy.'' Unsupported assertions will not meet this burden. In the absence of exceptional, documentable 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, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: November 30, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

This document was received at the Office of the Federal Register on March 13, 2007.

[FR Doc. E7–4888 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Beaufort Sea Alaska, Oil and Gas Lease Sale 202

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale OCS Oil and Gas Lease Sale 202, Beaufort Sea.

SUMMARY: The MMS will hold OCS Oil and Gas Lease Sale 202 on April 18, 2007, in accordance with provisions of the OCS Lands Act (43 U.S.C. 1331–1356, as amended), the implementing regulations (30 CFR part 256), and the OCS Oil and Gas Leasing Program for 2002–2007.

DATES: Lease Sale 202 is scheduled to be held on April 18, 2007, at the Wilda Marston Theatre, Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska. Public reading will begin at 9 a.m. All times referred to in this document are local Anchorage, Alaska times, unless otherwise specified.

ADDRESSES: A package containing the Final Notice of Sale (NOS) and several supporting and essential documents referenced herein are available from:

Alaska OCS Region, Information Resource Center, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823, *Telephone:* (907) 334–5200 or 1–800–764–2627.

These documents are also available on the MMS Alaska OCS Region's Web site at *http://www.mms.gov/alaska.*

Bid Submission Deadline: Bidders will be required to submit bids to the MMS at the Alaska OCS Region Office, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503, by 10 a.m. on the day before the sale, Tuesday, April 17, 2007. If bids are mailed, the envelope containing all of the sealed bids must be marked as follows:

Attention: Mr. Fred King, Contains Sealed Bids for Sale 202.

If bids are received later than the time and date specified above, they will be returned unopened to the bidders. Bidders may not modify or withdraw their bids unless the Regional Director, Alaska OCS Region receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, April 17, 2007. Should an unexpected event such as an earthquake or travel restrictions be significantly disruptive to bid submission, the Alaska OCS Region

may extend the Bid Submission Deadline. Bidders may call (907) 334–5200 for information about the possible extension of the Bid Submission Deadline due to such an event.

Four blocks in the easternmost Beaufort Sea area are subject to claims by both the United States and Canada. This Notice refers to this area as the Disputed Portion of the Beaufort Sea. The section on Method of Bidding identifies the four blocks and describes the procedures for submitting bids for them.

Area Offered for Leasing: The MMS is offering for leasing all whole and partial blocks listed in the document ''Blocks Available for Leasing in OCS Oil and Gas Lease Sale 202'' included in the Final NOS 202 package. All of these blocks are shown on the following Official Protraction Diagrams (which may be purchased from the Alaska OCS Region):

NR 05–01, Dease Inlet, revised September 30, 1997
NR 05–02, Harrison Bay North, revised September 30, 1997
NR 05–03, Teshekpuk, revised September 30, 1997
NR 05–04, Harrison Bay, revised September 30, 1997
NR 06–01, Beechey Point North, approved February 1, 1996
NR 06–03, Beechey Point, revised September 30, 1997
NR 06–04, Flaxman Island, revised September 30, 1997
NR 07–03, Barter Island, revised September 30, 1997
NR 07–05, Demarcation Point, revised September 30, 1997
NR 07–06, Mackenzie Canyon, revised September 30, 1997

Official block descriptions are derived from these diagrams; however, not all blocks included on a diagram are being offered. To ascertain which blocks are being offered and the royalty suspension provisions that apply, you must refer to the document ''Blocks Available for Leasing in OCS Oil and Gas Lease Sale 202.'' The Beaufort Sea OCS Oil and Gas Lease Sale 202 Locator Map is also available to assist in locating the blocks relative to the adjacent areas. The Locator Map is for use in identifying locations of blocks but is not part of the official description of blocks available for lease. Some of the blocks may be partially encumbered by an existing lease, or transected by administrative lines such as the Federal/State jurisdictional line. Partial block descriptions are derived from Supplemental Official OCS Block Diagrams and OCS Composite Block Diagrams, which are available upon request at the address, phone number, or Internet site given above.

Statutes and Regulations: Each lease issued in this lease sale is subject to the OCS Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 *et seq.*, as amended (92 Stat. 629), hereinafter called ''the Act''; all regulations issued pursuant to the Act and in existence upon the effective date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

Lease Terms and Conditions: For leases resulting from this sale the following terms and conditions apply:

Initial Period: 10 years.

Minimum Bonus Bid Amounts: $37.50 per hectare, or a fraction thereof, for all blocks in Zone A and $25.00 per hectare, or a fraction thereof, for all blocks in Zone B. Refer to the final Notice of Sale, Beaufort Sea Sale 202, April 2007 map and the Summary Table of Minimum Bids, Minimum Royalty Rates, and Rental Rates shown below.

Rental Rates: The Lessee shall pay the Lessor, on or before the first day of each lease year which commences prior to a discovery in paying quantities of oil or gas on the leased area, a rental at the rate shown below in the Summary Table of Minimum Bids, Minimum Royalty Rates, and Rental Rates. During the time period in which a lease is classified as producible, i.e., following a discovery in paying quantities, but before royalty-bearing production begins, a rental of $13 per hectare applies in both zones and is paid at the end of each lease year until the start of royalty-bearing production.

Minimum Royalty Rates: The Lessee shall pay the Lessor, at the expiration of each lease year which commences after the start of royalty-bearing production, a minimum royalty of $13 per hectare, or fraction thereof, with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due.

Royalty Rates: A 12½ percent royalty rate will apply for all blocks.

SUMMARY TABLE OF MINIMUM BIDS, MINIMUM ROYALTY RATES, AND RENTAL RATES

Terms (values per hectare or fraction thereof)	Zone A	Zone B
Royalty Rate	12½% fixed.	12½% fixed
Minimum Bonus Bid	$37.50	$25.00
Minimum Royalty Rate.	$13.00	$13.00
Rental Rates:		
Year 1	$7.50	$2.50
Year 2	$7.50	$3.75
Year 3	$7.50	$5.00
Year 4	$7.50	$6.25
Year 5	$7.50	$7.50
Year 6	$12.00	$10.00
Year 7	$17.00	$12.00
Year 8	$22.00	$15.00
Year 9	$30.00	$17.00
Year 10	$30.00	$20.00

Royalty Suspension Areas: Royalty suspension provisions apply to first oil production. Royalty suspensions on the production of oil and condensate, prorated by lease acreage and subject to price thresholds, will apply to all blocks. Royalty suspension volumes (RSV) are based on 2 zones, Zone A and Zone B, as depicted on the Map. More specific details regarding royalty suspension eligibility, applicable price thresholds and implementations are included below as well as in the document ''Royalty Suspension Provisions, Sale 202'' in the Final NOS 202 package.

Royalty Suspension Provisions: In accordance with applicable regulations at 30 CFR 260, the following royalty suspension provisions apply to leases issued as a result of Beaufort Sea Oil and Gas Lease Sale 202. The zones in which blocks are indicated on the Block List and the map included in the Notice of Sale package are available from the MMS OCS Alaska Region office.

These Royalty Suspension Provisions apply to Oil Production. In addition, refer to 30 CFR 218.151 and applicable parts of 260.120–260.124 for regulations on royalty suspensions and rental obligations that will apply to your lease.

1. A lease in the Beaufort Sea, depending on surface area and zone, will receive a royalty suspension volume (RSV) as follows:

Lease size hectares	Zone A million barrels RSV	Zone B million barrels RSV
Less than 771	10	15
771 to less than 1541	20	30
1541 or more	30	45

2. The RSV applies only to liquid hydrocarbon production, i.e., oil and condensates. Natural gas volumes that

leave the lease are subject to original lease-specified royalties. The market value of natural gas will be determined by MMS's Minerals Revenue Management (MRM) office. The MRM will value the natural gas from Sale 202 based on its potential uses and applicable market characteristics at the time the gas is produced.

3. Each lessee must pay royalty on production of oil that might otherwise receive royalty relief (in 30 CFR part 260) for any calendar year during which the actual New York Mercantile Exchange (NYMEX) annual price of oil exceeds the ''ceiling'' price threshold (adjusted for inflation) for oil in that year. Such production will be deducted from the remaining RSV. The actual NYMEX annual price of oil is defined as the arithmetic average of the daily closing prices for the ''nearby delivery month'' on the NYMEX for oil (light sweet crude) in a calendar year. The actual NYMEX annual price of oil is calculated by averaging the daily closing prices of oil for each month in the year, and then averaging the 12 monthly averages.

(a) The ceiling price threshold for oil in any year, say *t,* is determined by inflating the base year 2004 oil price of $39 per barrel. This base year price is modified by the percentage change in the implicit price deflator as reported by the U.S. Department of Commerce, Bureau of Economic Analysis, for the interval between 2004 and year *t,* resulting in the adjusted oil price ceiling for year *t*. For example, if the deflator indicates that inflation is 1.6 percent in 2005, 2.1 percent in 2006, and 2.5 percent in 2007, then the price ceiling in calendar year 2007 would become $41.47 per barrel for oil. Therefore, royalty on *all* oil production in calendar year 2007 would be due if the 2007 actual NYMEX oil price as calculated above exceeds $41.47 per barrel. (See exception in item 5 below.)

(b) Royalties on oil production, when the actual NYMEX annual price of oil exceeds the ceiling price in any calendar year, must be paid no later than 90 days after the end of that calendar year. (See 30 CFR 260.122(b)). Also, when the actual NYMEX annual price of oil exceeds the ceiling price in any calendar year, royalties on oil production must be provisionally paid in the following calendar year. (See 30 CFR 260.122(c)).

4. If the actual NYMEX quarterly price of oil is at or below the fixed ''floor'' price threshold of $21 per barrel (the price will not be adjusted for inflation) in any calendar quarter, then oil produced during that calendar quarter would be royalty free and would not count against the lease's remaining RSV. However, if the actual NYMEX quarterly price of oil is at or below the floor price after the RSV has been fully used, the lessee receives no additional royalty-free production.

The actual NYMEX quarterly price of oil is defined as the arithmetic average of the daily closing prices for the ''nearby delivery month'' on the NYMEX for oil in the calendar quarter. The applicable calendar year quarters are January—March, April—June, July—September, and October—December. The actual NYMEX quarterly price of oil is calculated by averaging the daily closing prices of oil for each month in the quarter, and then averaging the 3 monthly averages.

5. Within the same calendar year, the actual NYMEX quarterly price of oil could be equal to or less than the price floor in one or more quarters, but the actual NYMEX annual price of oil could be greater than the ceiling price. If that were to occur, and the original RSV for the lease has not been exhausted, the consequences of the actual NYMEX annual price of oil exceeding the price ceiling for the year would apply only to oil production during those quarters of the year in which the actual NYMEX quarterly price of oil is above the floor price. For example, assume that oil production from a lease is 8 million barrels in a calendar year, and the actual NYMEX annual price of oil is greater than the ceiling price. Assume further that the production of oil from that lease is 2 million barrels during a quarter of that same calendar year, and the actual NYMEX quarterly price of oil for that quarter is equal to or less than the floor price. In this situation, no royalties would be due on that quarter's oil production, and the remaining RSV for the lease would be unchanged for that quarter. Royalties, however, would be due on the 6 million barrels of oil produced during the other 3 quarters of that year, and the RSV remaining for the lease at the end of the year would be 6 million barrels less than it was at the beginning of the year.

6. For purposes of the RSV, a Sale 202 lease that is part of an approved unit agreement can only apply allocated production from the unit against the lease's RSV if that lease is included in an approved participating area. The RSV will be applied to each lease consistent with the production allocation schedule approved by the MMS for the participating area. Participating area means all or parts of unit tracts described and designated as a Participating Area under the unit agreement for the purposes of allocating one or more unitized substances produced from a reservoir.

7. Price thresholds apply throughout those periods (calendar year for the ceiling and quarter of the year for the floor) that commence with some RSV remaining unused.

8. A lessee must resume paying full royalties on the first day of the month following the month in which the RSV is exhausted. Lessees do not owe royalties for the remainder of the month in which the RSV is exhausted, unless the actual NYMEX annual price of oil exceeds the ceiling price threshold for that year.

9. The MMS will provide notice when the actual NYMEX annual price of oil is above the ceiling price threshold, or when the actual NYMEX quarterly price of oil is equal to or below the floor price threshold. Information on actual and threshold oil prices can be found at the MMS Web site (*http://www.mms.gov/econ*).

10. Minimum royalty requirements apply during RSV periods. *Debarment and Suspension (Nonprocurement):* As required by the MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, subpart I, as amended.

Also, in accordance with regulations pursuant to 43 CFR, part 42, subpart C, the lessee shall comply with the U.S. Department of the Interior's nonprocurement debarment and suspension requirements and agrees to communicate this requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease by including this term as a condition in their contracts and other transactions. Execution of the lease, which includes an Addendum specific to debarment, by each lessee constitutes notification to the MMS that each lessee is not excluded, disqualified, or convicted of a crime as described in 43 CFR 42.335, unless the lessee has provided a statement disclosing information as described in 43 CFR 42.335, and the MMS receives an exception from the U.S. Department of the Interior as described in 43 CFR 42.405 and 42.120.

Stipulations and Information to Lessees: The document entitled ''Lease Stipulations and Information to Lessees for Oil and Gas Lease Sale 202'' contains the text of the Stipulations and the Information to Lessees clauses. This

document is included in the Final NOS package.

Method of Bidding: Procedures for the submission of bids in Sale 202 are described in paragraph 1 below. Procedures for the submission of bids for the four blocks in the Disputed Portion of the Beaufort Sea will differ as described in paragraph 2 below.

1. *Submission of Bids.* For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed bid for Oil and Gas Lease Sale 202, not to be opened until 9 a.m., Wednesday, April 18, 2007.'' The total amount of the bid must be in whole dollars; any cent amount above the whole dollar will be ignored by MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the Final NOS 202 package.

2. *Submission of Bids in the Disputed Portion of the Beaufort Sea.* Procedures for the submission of bids on blocks 6201, 6251, 6301, and 6361 in Official Protraction Diagram NR 07–06 will differ from procedures in paragraph (1.) above as follows:

(a) Separate, signed bids on these blocks must be submitted in sealed envelopes labeled only with ''Disputed Portion of the Beaufort Sea,'' Company Number, and a sequential bid number for the company submitting the bid(s). The envelope thus would be in the following format:

(b) Disputed Portion of the Beaufort Sea Bid, *Company No.:* 00000, *Bid No.:* 1.

On or before April 18, 2012, the MMS will determine whether it is in the best interest of the United States either to open bids for these blocks or to return the bids unopened. The MMS will notify bidders at least 30 days before bid opening. Bidders on these blocks may withdraw their bids at any time after such notice and prior to 10 a.m. of the day before bid opening. If the MMS does not give notice by April 18, 2012, the bids will be returned unopened. The MMS reserves the right to return these bids at any time. The MMS will not disclose which blocks received bids or the names of bidders in this area unless the bids are opened.

Restricted Joint Bidders: The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 71 FR 70530 on December 5, 2006. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g. 33.33333 percent. The MMS may require bidders to submit additional documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders must execute all documents in conformance with signatory authorizations on file in the Alaska OCS Region. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders are advised that MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document ''Bid Form and Envelope'' contained in the Final NOS 202 package).

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to MMS equal to one-fifth of the bonus bid amount for each such bid submitted for Sale 202. Under the authority granted by 30 CFR 256.46(b), the MMS requires bidders to use electronic funds transfer (EFT) procedures for payment of the one-fifth bonus bid deposits, following the detailed instructions contained in the document ''Instructions for Making EFT Bonus Payments'' included in the Final NOS 202 package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instruction) by 1 p.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Certain bid submitters [i.e., those that do NOT currently own or operate an OCS mineral lease OR those that have ever defaulted on a one-fifth bonus payment] will be required to guarantee (secure) their one-fifth bonus payment *prior* to the submission of bids. For those who must secure the EFT one-fifth bonus payment, one of the following options may be provided: (1) A third-party guarantee; (2) an Amended Development Bond Coverage; (3) a Letter of Credit; or (4) a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this sale prior to a written acceptance of a bid for the block.

Acceptance, Rejection or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Final NOS Sale 202 package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. The Attorney General of the United States may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the Regional Director and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures.

Successful Bidders: As required by MMS, each company that has been awarded a lease must execute all three copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, subpart I.

Affirmative Action: The MMS *requests* that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the Alaska OCS Region. This certification is required by 41 CFR 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are *required* to be on file in the Alaska OCS Region.

Jurisdiction: The United States claims exclusive maritime resource jurisdiction over the area offered. Canada claims such jurisdiction over the four easternmost blocks included in the sale area. These blocks are located in Official Protraction Diagram NR 07–06 and are block numbers 6201, 6251, 6301, and 6351. Nothing in this Notice shall affect or prejudice in any manner the position, rights or interests of the United States with respect to (1) the nature or extent of U.S. internal waters or territorial sea, (2) the U.S. Exclusive Economic Zone,

(3) the U.S. continental shelf, or (4) U.S. sovereign rights or jurisdiction for any purpose whatsoever.

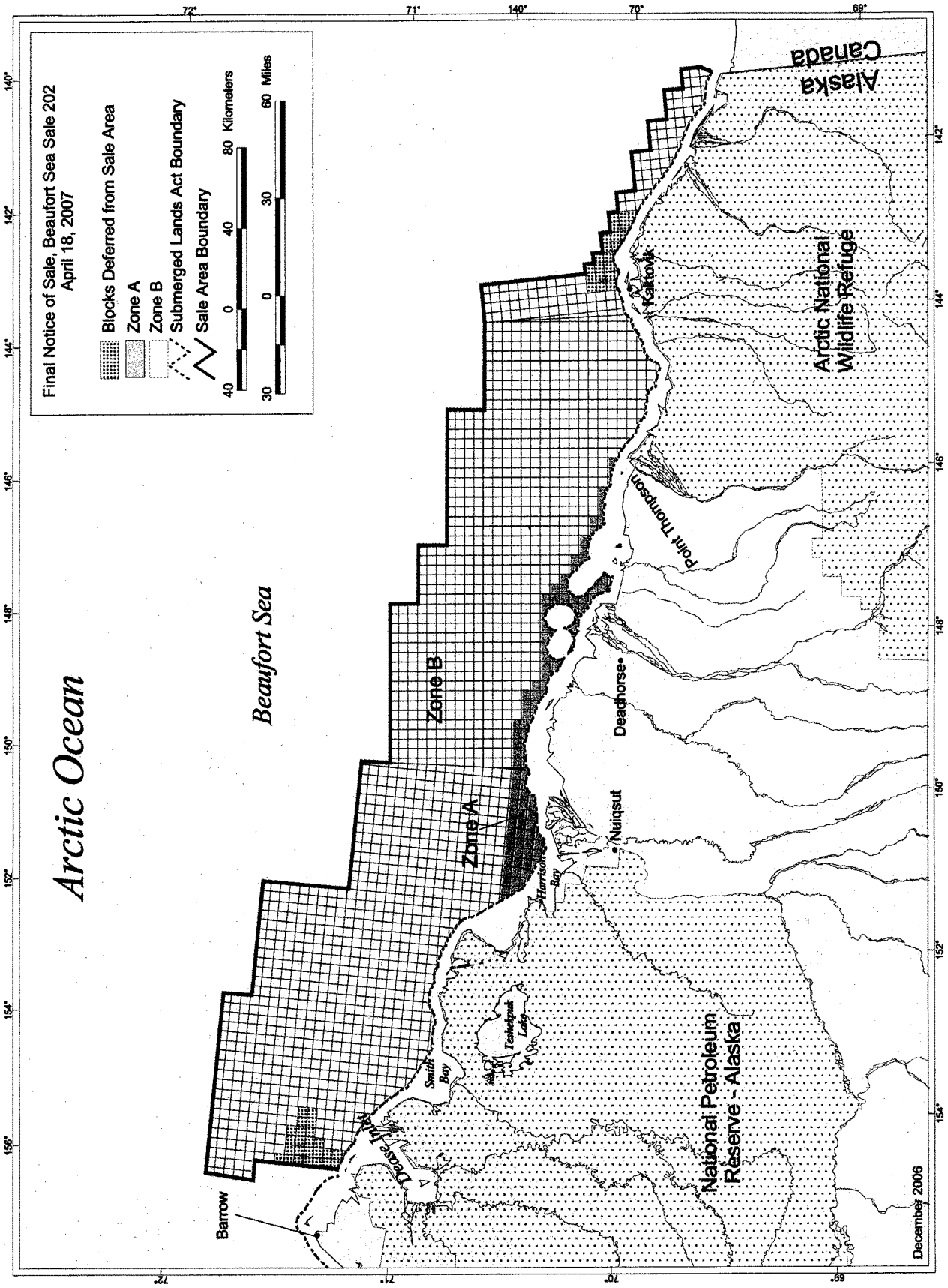
Notice of Bidding Systems: Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the OCS Lands Act requires that, at least 30 days before any lease sale, a Notice be submitted to Congress and published in the **Federal Register**. This Notice of Bidding Systems is for Sale 202, Beaufort Sea, scheduled to be held on April 18, 2007.

In Sale 202, all blocks are being offered under a bidding system that uses a cash bonus and a fixed royalty of 12½ percent with a royalty suspension of up to 30 million barrels of oil equivalent per lease in Zone A of the sale area or with a royalty suspension of up to 45 million barrels of oil equivalent per lease in Zone B of the sale area. The amount of royalty suspension available on each lease is dependent on the area of the lease and specified in the Sale Notice. This bidding system is authorized under 30 CFR 260.110(g), which allows use of a cash bonus bid with a royalty rate of not less than 12½ percent and with suspension of royalties for a period, volume, or value of production, and an annual rental. Analysis performed by MMS indicates that use of this system provides an incentive for development of this area while ensuring that a fair sharing of revenues will result if major discoveries are made and produced.

Dated: March 12, 2007.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.



[FR Doc. 07–1298 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf Civil Penalties

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice summarizing Outer Continental Shelf Civil Penalties paid from January 1, 2006, through December 31, 2006.

SUMMARY: This notice provides a listing of civil penalties paid from January 1, 2006, through December 31, 2006, for violations of the Outer Continental Shelf Lands Act (OCSLA). The goal of the MMS Outer Continental Shelf (OCS) Civil Penalties Program is to assure safe and clean operations in the OCS. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of criminal penalties, the program is designed to encourage compliance with OCS statutes and regulations. The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Joanne McCammon, Program Coordinator, at 703–787–1292.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90) strengthened section 24 of the OCSLA Amendments of 1978. Subtitle B of OPA 90, titled ''Penalties,'' increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $20,000 per violation for each day of noncompliance. More importantly, in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment; OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

The provisions of OPA 90 also require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index. Every 3 years, MMS analyzes the civil penalty maximum amount in conjunction with the CPI prepared by the U.S. Department of Labor. If an adjustment is necessary, MMS informs the public through the **Federal Register** of the new maximum amount. The MMS has published regulations adjusting the civil penalty assessment to $25,000 on August 8, 1997 (62 FR 42668), and to $30,000 on November 28, 2003 (68 FR 61622).

Between August 18, 1990, and January 2007, MMS initiated 583 civil penalty reviews. Operators have paid 459 civil penalties for a total of $15,370,792 in fines.

On September 1, 1997, the Associate Director for Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases in the OCS that MMS will annually publish a summary of OCS civil penalties paid. The annual summary will highlight the identity of the party, the regulation violated, and the amount paid. The following table provides a listing of the 41 penalties paid between January 1, 2006, and December 31, 2006. The total amount collected was $1,480,000. A quarterly update of the list is posted on MMS's home page, *http://www.mms.gov/civilpenalties/CP_2006.HTM*.

2006 CIVIL/CRIMINAL PENALTIES SUMMARY; ALL PENALTIES PAID IN CALENDAR 2006

[01/01/2006–12/31/2006]

Operator name (contractor) and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
The Houston Exploration Company. (Grasso Production Management) G–2003–004	Failed to conduct one annual crane inspection 7/1/02–9/30/02	$10,000 8/25/06	§ 250.108.
PetroQuest Energy, LLC (Wood Group Production Services). G–2004–026	Missing grating & handrails, corroded unsafe steps, and severe corrosion around the fuel scrubber created an unsafe situation for personnel. Also, the flowline and departing pipeline did not have secondary over-pressure protection. 6/29/04–6/29/04	$60,000 1/3/06	§ 250.802(b), § 250.107.
El Paso Production Oil and Gas Company. G–2005–007	Explosion and fire occurred on platform from welding and cutting operations near hydrocarbons. 12/23/04–12/23/04	$25,000 2/7/06	§ 250.107
Exxon Mobil Corporation G–2005–012	The Pressure Safety Low (PSL) for Well G–24 had the incorrect spring and piston installed; the spring tension was backed off to a point where it would not function. This violation occurred for 11 days. 12/19/04–12/29/04	$25,000 6/8/06	§ 250.803(b)(2)(i).
Apache Corporation (Wood Group Production Services). G–2005–014	During an annual inspection, the inspector discovered that the Emergency Shut Down (ESD) stations for both the North and South boat landings were out-of-service. 10/15/04–10/18/04	$28,000 3/10/06	§ 250.803.
Noble Energy, Inc (Hercules Offshore Drilling) G–2005–015	The gas detector panel that monitors the mud pit room and shale shaker area was found to be in bypass during a monthly rig inspection. The operator forgot to put it back in service after calibrating the sensors. When the panel was taken out of bypass and tested, the audible alarm failed to activate. 2/23/05–3/2/05	$160,000 2/15/06	§ 250.459(b).
Energy Partners Ltd G–2005–016	The level safety high (LSH) shut-in sensor for the deck drain sump tank was bypassed at the main panel. Neither the LSH nor the operating condition of the sump tank were being monitored by platform personnel. 3/2/05–3/2/05	$8,000 1/10/06	§ 250.803(c).

2006 CIVIL/CRIMINAL PENALTIES SUMMARY; ALL PENALTIES PAID IN CALENDAR 2006—Continued

[01/01/2006–12/31/2006]

Operator name (contractor) and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
El Paso Production Oil and Gas Company. (Baker Energy, Inc.)	Shut down valve connected in such a way that it would not operate as designed; pressure would not bleed off if an upset had occurred.	$10,000 8/7/06	§ 250.802(b).
G–2005–020	3/10/05–3/10/05		
Apache Corporation (Wood Group Production Services).	Grating missing on the plus 10 deck level in two areas and area not barricaded to prevent personnel from entering.	$66,000 2/9/06	§ 250.107.
G–2005–021	4/10/05–4/10/05		
Apache Corporation (Wood Group Production Services).	During a production follow-up inspection on February 20, 2005, wells A002 and A003 Surface Safety Valves (SSVs) were pinned out of service in the open position, and the wells were not flagged or monitored.	$24,000 3/13/06	§ 250.803(c).
G–2005–022	2/20/05–2/20/05		
ATP Oil & Gas Corporation (Wood Group Production Services).	The vertical run Surface Safety Valve (SSV) for Well C–2 was bypassed and locked out of service with a locking cap.	$21,000 6/22/06	§ 250.803(c).
G–2005–023	5/17/05–5/19/05		
Millennium Offshore Group, Inc (TODCO)	Unsafe and un-workmanlike operations were conducted in that the policies and procedures for Confined Space Entry were not being adhered to as per Operator's Health, Safety and Environment manual.	$10,000 7/27/06	§ 250.107.
G–2005–024	3/30/05–3/30/05		
Noble Energy	During an inspection on May 2, 2005, the top and bottom isolation valves on the Level Safety Low (LSL) for the Bad Oil Tank (ABJ–5020) were found blocked out of service and not flagged or being monitored.	$8,000 3/24/06	§ 250.803(c).
G–2005–025	5/1/05–5/2/05		
Apache Corporation	Apache failed to comply with the safe and workmanlike manner and well control requirements addressed in the regulations. A remote blowout preventer (BOP) station on the rig floor would not operate nor function the bottom pipe ram and the hydraulic (HCR) choke valve. An accumulation of hydraulic oil on derrick beams and board rack, oily and slippery hand rail, and no grating over mud pits demonstrated Apache's failure to maintain all equipment in a safe condition.	$28,000 5/11/06	§ 250.107, § 250.615(c).
G–2005–026	7/25/05–7/25/05		
Pioneer Natural Resources USA, Inc.	Operations were not performed in a safe manner as Personnel attempted to replace a 2'' ball valve on the water dump bypass line on the Chem-Electric Treater without draining the vessel. This created an uncontrolled oil release from the vessel over the structure's open grating, and into the containment skid which was damaged and unable to contain the oil. As a result, approximately 1 barrel of oil polluted the Gulf.	$45,000 5/10/06	§ 250.300(b), § 250.300(a), § 250.107(a).
G–2005–027	6/10/05–6/10/05		
SPN Resources, LLC	The sump system could not automatically maintain the oil at a level sufficient to prevent discharge of oil into offshore waters.	$10,000 6/13/06	§ 250.300(b).
G–2005–028	5/6/05–5/6/05		
ATP Oil & Gas Corporation	The Level Safety Low (LSL) on the water section of the Heater Treater was bypassed and blocked out of service. Startup, maintenance, or testing procedures were not being performed; personnel were not monitoring the bypassed and blocked out functions; and the LSL was not flagged.	$5,000 6/27/06	§ 250.803(c).
G–2006–001	10/31/05–10/31/05		
Petroquest Energy, LLC (Grasso Production Management)	The Gas Detector Head (ASH) in the operator's tool room was found covered with plastic wrap, which rendered it inoperable. Paint fumes were activating the ASH and plastic bags were placed over it to prevent nuisance shut-ins and to keep the fumes from contaminating the sensor.	$20,000 6/8/06	§ 250.803(c).
G–2006–002	6/19/05–6/20/05		

2006 CIVIL/CRIMINAL PENALTIES SUMMARY; ALL PENALTIES PAID IN CALENDAR 2006—Continued

[01/01/2006–12/31/2006]

Operator name (contractor) and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Apache Corporation	An employee was injured since work had been performed in an unsafe and un-workmanlike manner. On 10–3–05, in order to access a well slot, 33'' openings were cut in the grating on the well deck and on the lower production deck. The two holes cut in the decking were never barricaded, covered, guarded, or made inaccessible until 10–5–05, after the employee fell 8′ through the unguarded hole cut in the well deck and into the opening cut on the lower production deck. He was able to catch himself before falling completely through the second opening into the cross members and well slot guide 40′ below..	$70,000 5/16/06	§ 250.107.
G–2006–003	10/3/05–10/5/05		
Noble Energy, Inc	While enroute to another destination, the Minerals Management Service (MMS) Inspectors noticed a multi-colored sheen on the water coming from the ST 196 Platform B. They landed on the platform and found oil flowing out of the vent hatch on the Sump Tank ABH–4760. The MMS Inspectors also found the Sump System did not automatically maintain the oil level sufficiently enough to prevent discharge of oil into offshore waters.	$50,000 7/13/06	§ 250.300(a), § 250.300(b).
G–2006–004	10/18/05–10/18/05		
Kerr-McGee Oil & Gas Corporation.	Three safety devices were found bypassed at the panel—the level safety low for the wet/dry oil tank, the shut down valve for the dry oil pump, and the shut down valve for the incoming pipeline. Proposed amount mitigated from information supplied in letter.	$15,000 7/19/06	§ 250.1004, § 250.803.
G–2006–005	11/12/04–11/12/04		
ATP Oil & Gas Corporation	An injury occurred as a result of unsafe and un-workmanlike operations. A contract worker fell 30' through an unsecured access hatch. Additionally, large openings in the deck were found and sections of heliport skirting were missing.	$110,000 12/29/06	§ 250.107.
G–2006–006	10/29/04–11/6/04		
Union Oil Company of California	A pollution incident occurred as a result of improperly isolating the turbine compressor from the production train.	$25,000 7/25/06	§ 250.300(a).
G–2006–007	9/10/04–9/10/04		
Tana Exploration Company, LLC	The primary and secondary surface safety valves (SSV), in addition to the fuel gas were bypassed on Caisson Well No. 28. The relays were placed in bypass by BP Exploration and Production employees (acting as contractors for Tana) on February 14, 2005. When an upset occurred on February 19, 2005, on the upstream processing platform, the Well No. 28 did not shut in due to these safety devices being bypassed. The pipeline experienced overpressure and the flange gasket ruptured allowing gas/condensate to escape. The Well was shut in using the boat landing emergency shut down pull loop.	$165,000 8/31/06	§ 250.803(c), § 250.803(c).
G–2006–008	2/14/05–2/19/05		
Energy Partners, Ltd	The pressure safety low (PSL) on the departing high-pressure transfer gas pipeline (KAH–103) was by-passed at the master panel, leaving the pipeline unprotected from a leak or rupture. The relay was not flagged and conditions were not being monitored.	$10,000 6/22/06	§ 250.1004.
G–2006–009	7/6/05–7/7/05		
Arena Offshore, LLC (Island Operators Co., Inc.)	Pollution occurred in offshore waters from overflow of vessel to deck caused from a pipeline being tested which was using FSVs instead of block valves. This overflow went to the deck containment system and the deck drain sump system tank was inoperable.	$27,000 8/25/06	§ 250.300(b), § 250.300(a).
G–2006–010	8/26/05–8/26/05		
Callon Petroleum Operating Company.	The fuel gas supply for the sump pump was manually closed, placing the sump pump in an out of service mode. Neither the sump pump nor the sump tank where being monitored by platform personnel.	$5,000 5/11/06	§ 250.300(b).
G–2006–011	12/12/05–12/12/05		
Forest Oil Corporation (Production Management Industries, LLC).	Operations were not performed in a safe and workmanlike manner, and equipment had not been maintained in a safe condition. Pollution occurred since a fuel tank was filled beyond capacity and the sump system had not been properly maintained.	$45,000 9/6/06	§ 250.107, § 250.107, § 250.300(a).
G–2006–012	6/17/05–6/17/05		

2006 CIVIL/CRIMINAL PENALTIES SUMMARY; ALL PENALTIES PAID IN CALENDAR 2006—Continued

[01/01/2006–12/31/2006]

Operator name (contractor) and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Palace Operating Company (Island Operators Co.)	During an annual inspection, the MMS inspector detected that the Surface Safety Valve (SSV) on well #2 was locked open using a fusible SSV stem cap rendering the valve inoperable or bypassed. This valve would not close had an undesirable event occurred (under pressure or overpressure of the flowline).	$5,000 10/27/06	§ 250.803(c).
G–2006–013	11/28/05–11/28/05		
Total E&P USA, Inc	The Emergency Shut Down Valves were bypassed on both boat landings. The two PSVs on the Intermediate Production Separator were found closed thus taking them out of service (bypassed).	$130,000 6/16/06	§ 250.803, § 250.803.
G–2006–014	8/15/05–8/21/05		
Northstar Gulfsands, LLC (Offshore Contract Services LLC)	The level safety low (LSL) on the atmospheric bad oil tank was manually closed placing it in bypass.	$15,000 9/6/06	§ 250.803.
G–2006–015	1/4/06–1/5/06		
Nippon Oil Exploration U.S.A	The Platform's two primary means of escape had not been adequately maintained. Personnel on the platform had no safe means of egress due to missing grating and handrails.	$30,000 9/28/06	§ 250.107.
G–2006–017	1/3/06–1/3/06		
Chevron U.S.A. Inc	Platform's emergency equipment had not been adequately maintained. The winch and lower flange kit on the south capsule was severely corroded and unsafe for use.	$30,000 10/30/06	§ 250.107(a)(2).
G–2006–018	8/9/05–8/9/05		
ATP Oil & Gas Corporation	The level controller which starts the sump pump was improperly set, therefore rendering the sump pump incapable of maintaining the oil in the sump tank at a safe level to prevent discharge into the gulf waters.	$12,000 9/22/06	§ 250.300(b).
G–2006–019	9/19/04–9/19/04		
ATP Oil & Gas Corporation (Wood Group Production Services).	The Emergency Shut Down (ESD) Stations on the condensate accumulator deck, sump deck, well bay area, and boat landing were all rendered out of service since the ESD supply line was disconnected.	$20,000 9/22/06	§ 250.803(c).
G–2006–020	11/9/04–11/9/04		
Marathon Oil Company	The Temperature Sensing Element for the +10 deck drain Sump Pump was bypassed.	$40,000 11/9/06	§ 250.803.
G–2006–022	9/23/04–9/30/04		
BP America Production Company	Operations were not performed in a safe and workmanlike manner. While making an assessment of the unsafe conditions on the platform that needed repairing, the construction crew did not barricade a 3′4″ x 3′4″ opening in the stairway landing. Later, one of the crew members was injured when he fell through the open hole, approximately 20′ and into the Gulf of Mexico.	$25,000 10/25/06	§ 250.107(a)(1).
G–2006–023	2/10/06–2/10/06		
GOM Shelf LLC (Crown Oilfield Services, Inc.)	While attempting to secure and barricade hurricane related damages on the sub-cellar deck, a contract employee was seriously injured since the work was not performed in a safe and workmanlike manner. He was not wearing fall protection while he was in the direct vicinity of open holes in the deck grating, and he fell approximately 25–30 feet through a 3′ x 3′ opening onto the +10 deck.	$30,000 10/6/06	§ 250.107(a).
G–2006–026	2/10/06–2/10/06		
Pioneer Natural Resources USA, Inc.	The main safety panel was bypassed during testing. In order to test any safety device on this panel, they all had to be placed in bypass. When the panel was in total bypass, the supply to the indicators was removed not allowing them to trip when an abnormal condition became present, thus there was no way for personnel to monitor the bypassed devices.	$20,000 12/13/06	§ 250.803(c).
G–2006–034	7/17/06–7/17/06		
Venoco, Inc	During well recompletion operations, an accident occurred, which resulted in a loss of well control (blowout), and a 3 gallon oil spill. An investigation revealed removal of a lockdown pin from the well head during the alignment of the split tube hanger had circumvented the blowout preventer system.	$30,000 4/27/06	§ 250.300(a), § 250.107(a).
P–2005–001	11/19/04–11/19/04		

2006 CIVIL/CRIMINAL PENALTIES SUMMARY; ALL PENALTIES PAID IN CALENDAR 2006—Continued

[01/01/2006–12/31/2006]

Operator name (contractor) and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Nuevo Energy Company	On February 16, 2004, a transformer on a variable speed drive (VSD) unit over-heated and caught fire. A Minerals Management Service (MMS) investigation of the incident determined the fire, which was confined to the motor control center room, was due to the following causes: The electrical overload protection on the VSD had been placed in a non-functional mode. High amperage from a downhole electric submersible pump caused transformer to overload on the VSD, which subsequently overheated. Melting metal from the transformer dripped into a pan of threading oil below the transformer. A cotton glove that was laying in the pan of threading oil ignited. The resultant fire was extinguished by platform personnel investigating the source of smoke from the motor control center.	$8,000 2/8/06	§ 250.107, § 250.803(c)(1).
P–2004–002	2/16/04–2/16/04 3/31/04–3/31/04		
Total Penalties Paid: 1/1/2006–12/31/2006, 41 Cases: ($1,480,000)			

The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

Authority: 43 U.S.C. 1331 *et seq.*, 31 U.S.C. 9701.

Dated: January 30, 2007.

Gregory J. Gould,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. E7–4876 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Draft Environmental Impact Statement, Valley Forge National Historical Park, Pennsylvania

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the General Management Plan, Valley Forge National Historical Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Draft General Management Plan and Environmental Impact Statement for Valley Forge National Historical Park, Pennsylvania. An electronic version of the document is currently available for public review on the National Park Service Planning, Environment and Public Comment Web site at *http://parkplanning.nps.gov*. However, printed copies of the document will not be available until on or about February, 2007.

DATES: The National Park Service will accept comments on the Draft General Management Plan and Environmental Impact Statement from the public for a period of 60 days following publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**. Public meetings will be scheduled during the comment period. Interested persons may check the park Web site at *http://www.nps.gov/vafo* for date, time, and place.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov,* at the Valley Forge NHP Welcome Center, 1400 North Outer Line Drive, King of Prussia, Pennsylvania, 610–783–1099 and at the following locations:

Lower Providence Community Library, 50 Parklane Drive, Eagleville, PA 19403–1171.

Tredyffrin Public Library, 582 Upper Gulph Rd., Strafford-Wayne, PA 19087–2052.

Phoenixville Public Library, 183 Second Avenue, Phoenixville, PA 19460.

Montgomery County-Norristown Public Library, 1001 Powell Street, Norristown, PA 19401.

Upper Merion Township Library, 175 West Valley Forge Road, King of Prussia, PA 19406.

FOR FURTHER INFORMATION CONTACT: Deirdre Gibson, Valley Forge NHP, 1400 North Outer Line Drive, King of Prussia, Pennsylvania 19406, *Deirdre_gibson@nps.gov*.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent Mike Caldwell, Valley Forge NHP, 1400 North Outer Line Drive, King of Prussia, PA 19406. You may also comment via the Internet at *http://parkplanning.nps.gov*. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly (Deirdre Gibson, 610–783–1047). Finally, you may hand-deliver comments to Valley Forge NHP, 1400 North Outer Line Drive, King of Prussia, PA 19406. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 22, 2007.

Michael A. Caldwell,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. E7–4907 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–DJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan and Final Environmental Impact Statement, Walnut Canyon National Monument, Arizona

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement/ General Management Plan for Walnut Canyon National Monument.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Final Environmental Impact Statement/ General Management Plan (FEIS/GMP) for Walnut Canyon National Monument, Arizona.

DATES: The FEIS/GMP was on public review from November 6, 2001 through January 7, 2002. Responses to public comment are addressed in the documents. A 30-day no-action period will follow the Environmental Protection Agency's Notice of Availability of the FEIS/GMP.

ADDRESSES: Copies of the FEIS/GMP are available from the Superintendent, Flagstaff Area National Monuments (Wupatki, Sunset Crater Volcano, and Walnut Canyon), 6400 N. Highway 89, Flagstaff, Arizona 86004. Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, 6400 N. Highway 89, Flagstaff, Arizona 86004, Telephone: 928–526–1157.

Planning and Environmental Quality, Intermountain Support Office—Denver (Room 20), National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2377.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The Walnut Canyon FEIS/GMP evaluates the environmental consequences of the proposed action and the other alternatives on archeological resources, historic character of the built environment, long-term integrity of ethnographic resources, natural systems and processes, and threatened, endangered, and sensitive species. Impacts are also detailed on visitors' ability to experience park resources; park neighbors, local, state, and tribal land management plans and land/resource managing agencies; and operational efficiency. The preferred alternative would preserve untrailed expanses, unfragemented natural systems, and relatively pristine conditions throughout the park. it would protect Walnut Canyon as a critical wildlife corridor. Visitation would be managed with the goal of providing quality learning opportunities in an intimate atmosphere while maintaining the health of the canyon ecosystem. The natural soundscape and tranquil setting of the canyon would be enhanced through strategic placement of facilities. The park would remain day use only. Efforts would be made to provide a broader range of educational offerings, and a greater number of archeological sites would be available for visitation.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Flagstaff Area National Monuments at the address listed above.

Dated: November 15, 2006.

Michael D. Snyder,

Director, Intermountain Region, National Park Services.

Editorial Note: This document was received at the Office of the Federal Register March 14, 2007.

[FR Doc. 07–1314 Filed 3–16–07; 8:45 am]

BILLING CODE 4312–04–M

DEPARTMENT OF THE INTERIOR

National Park Service

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare an Environmental Impact Statement for the Foothills Parkway Section 8B, Great Smoky Mountains National Park

AGENCIES: National Park Service; and Federal Highway Administration.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for the Foothills Parkway Section 8B, Great Smoky Mountains National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) and the Federal Highway Administration, Eastern Federal Lands Highway Division will serve as joint lead agencies in the preparation of an Environmental Impact Statement (EIS) for the Foothills Parkway Section 8B, Great Smoky Mountains National Park, Tennessee. Section 8B is located in Sevier and Cocke Counties, Tennessee. This effort will analyze the impacts of alternatives for this section of the Foothills Parkway.

The public scoping process for this EIS has been initiated with issuance of this notice. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concern that should be addressed in the EIS process, including a suitable range of alternatives, the nature and extent of potential environmental impacts, and appropriate mitigation strategies.

A suitable range of alternatives will be considered along with the no-action alternative, including, but not limited to construction of a road through this section of the Parkway corridor, construction of a trail instead of a road, and construction of a combination road and trail.

A scoping newsletter will be prepared in spring 2007 that will detail the issues identified to date. Copies of the newsletter when available may be obtained from the NPS Planning, Environment, and Public Comment (PEPC) Web site: *http://parkplanning.nps.gov.*

DATES: Beginning in spring 2007, public information meetings will be held in the vicinity of Great Smoky Mountains National Park. The location, date, and time of the meetings and deadlines for written comments will be announced via local and regional media. Announcements will also be placed on the following Web sites: *http://parkplanning.nps.gov* and *http://www.efl.fhwa.dot.gov.* All interested individuals, organizations, and agencies are invited to attend these meetings to comment verbally or provide written comments and suggestions during the scoping period.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov* and in the office of the Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, Tennessee 37738, Telephone: 865–436–1207.

FOR FURTHER INFORMATION CONTACT: National Park Service, Foothills Parkway Section 8B EIS, *Attention:* Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, Tennessee 37738. *Telephone:* 865–436–1207.

Federal Highways, Eastern Federal Lands Highway Division, Jack Van Dop, Environmental Specialist, Federal Highway Administration, 21400

Ridgetop Circle, Sterling, Virginia 20166. *Telephone:* 703–404–6282.

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping newsletter or on any other issues associated with this action, you may mail or hand-deliver comments to the address listed above, or you may comment via the NPS PEPC Web site. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The authority for publishing this notice is contained in 40 CFR 1506.6.

The responsible officials for this EIS are Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303, and Donald R. Tuggle, Director of Program Administration, Federal Highways Administration, Eastern Federal Lands Highway Division, 21400 Ridgetop Circle, Sterling, Virginia 20166.

Dated: January 17, 2007.

Patricia A. Hooks,

Regional Director, Southeast Region.

Dated: January 11, 2007.

Donald R. Tuggle,

Director of Program Administration, FHWA–EFLHD.

[FR Doc. 07–1311 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–8A–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Record of Decision (ROD) on the Final General Management Plan/Environmental Impact Statement (FGMP/EIS), Abraham Lincoln Birthplace National Historic Site

SUMMARY: The National Park Service (NPS) announces the availability of the ROD on the FGMP/EIS for Abraham Lincoln Birthplace National Historic Site, Kentucky. This is being done pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

On November 29, 2006, the Regional Director, NPS, Southeast Region, approved the ROD for the project. As soon as practicable, the NPS will begin to implement the FGMP/EIS, described as the Preferred Alternative contained in the FGMP/EIS issued on October 20, 2006. The approved plan will enhance opportunities for visitors to interact with and appreciate all of the national historic site's resources while providing for the preservation or adaptive use of cultural resources when implemented. The approved plan also recommends that the official name of the site be changed to ''Abraham Lincoln Birthplace National Historical Park.''

DATES: The ROD was signed by the Regional Director, NPS, Southeast Region, on November 29, 2006.

ADDRESSES: Copies of the ROD are available from the Superintendent, Abraham Lincoln Birthplace National Historic Site, 2995 Lincoln Farm Road, Hodgenville, Kentucky 42748–9707; *telephone:* 270–358–3137.

FOR FURTHER INFORMATION CONTACT: The Superintendent, Abraham Lincoln National Historic Site, at the address and telephone number shown above.

SUPPLEMENTARY INFORMATION: The responsible official for the ROD is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: January 16, 2007.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. E7–4909 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–5C–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 March 3, 2007.

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 April 3, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Coconino County

Grand Canyon Airport Historic District, Approx. 2.6 E of jct. of U.S. 180 and Forest Rd. 305, Tusayan, 07000278

Maricopa County

Margarita Place Historic District, Bounded by Thomas Rd., Windsor Ave., 15th and 16th Ave., Phoenix, 07000279

FLORIDA

Volusia County

St. Rita's Colored Catholic Mission, 314 Duss St., New Smyna Beach, 07000280

INDIANA

Monroe County

Hinkle Garton Farmstead, 2920 E. 10th St., Bloomington, 07000282

IOWA

Pottawattamie County

Lincoln—Fairview Historic District, Roughly bounded by W. Kanesville Blvd., Oakland Ave., Fairview Cemetery, and N. 1st St., Council Bluffs, 07000281

KENTUCKY

Butler County

Carson—Annis Ferry Farm, 1086 Annis Ferry Rd., Morgantown, 07000286

Franklin County

Weehawken, 1 Weehawken Ln., Jett, 07000283

Garrard County

Paint Lick School, 10973 Richmond Rd., Paint Lick, 07000284

Madison County

Union Bus Station, 127 S. Third St., Richmond, 07000285

Woodford County

Cleveland House, 140 Park St., Versailles, 07000287

MASSACHUSETTS

Barnstable County

Paul Palmer (Shipwreck and Remains), Address Restricted, Provincetown, 07000288

NEW YORK

Albany County

Van Ostrande—Radliff House, 48 Hudson Ave., Albany, 07000291

Onondaga County

Martisco Station, Martisco Rd., N of Lyons Rd., Martisco, 07000292

Snow, C.W., & Company Warehouse, 230 W. Willow St., Syracuse, 07000290

Stone Aravia School, 6453 NY 31, Cicero, 07000289

NORTH CAROLINA

Brunswick County

Oak Island Lighthouse, 300A Caswell Beach Rd., N of NC 133, Caswell Beach, 07000293

Cumberland County

Haymount Historic District (Boundary Increase), (Fayetteville MRA) 100–200 blks Bradford Ave., 801 Hay St. 801, 802, 806 Arsenal Ave., Fayetteville, 07000296

Guilford County

West High Street Historic District, 407, 409, 415, 501, 503 and 507 W. High St., 106, 107 and 110 Oak St., High Point, 07000295

Robeson County

Centenary Methodist Church, 2585 NC 130 E, jct. with NC 2462, Rowland, 07000294

OHIO

Ashland County

Bull, T.J. and Sarah, House, 109 S. Market St., Loudonville, 07000302

Hamilton County

Clifton Methodist Episcopal Church, 3418 Clifton Ave., Cincinnati, 07000297

Lawrence County

Olive Furnace, OH 93 at TR 239 (Olive Branch Rd.), Pedro, 07000299

Marion County

Marion County Telephone Company Building, 197 S. Main St., Marion, 07000298

OREGON

Clatsop County

USS LCI–713 (Landing Craft), 100 39th St. (Pier 39), Astoria, 07000300

RHODE ISLAND

Providence County

Rosedale Apartments, 1180 Narragansett Blvd., Cranston, 07000301

VIRGINIA

Smyth County

Hungry Mother State Park Historic District, 2854 Park Blvd., Marion, 07000303

WASHINGTON

King County

MV Westward (Wooden Motor Vessel), The Center for Wooden Boats, 1010 Valley St., Seattle, 07000304

Sigma Kappa Mu Chapter House, 4510 22nd Ave. NE, Seattle, 07000305

[FR Doc. E7–4875 Filed 3–16–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

List of Program Eligible for Inclusion in Fiscal Year 2007 Funding Agreements To Be Negotiated With Self-Governance Tribes

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice lists program or portions of programs that are eligible for inclusion in Fiscal Year 2007 funding agreements with self-governance tribes and lists programmatic targets pursuant to section 405(c)(4) of the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2007.

ADDRESSES: Inquiries or comments regarding this notice may be directed to Mr. Richard Ives, Director, Native American and International Affairs Office, Bureau of Reclamation, 1849 C Street, NW., MS–7069–MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413, the '' Tribal Self-Governance Act'' or the ''Act'') instituted a permanent self-governance program at the Department of the Interior (DOI). Under the self-governance program certain programs, services, functions, and activities, or portions thereof, in DOI bureaus other than the Bureau of Indian Affairs (BIA) are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Act, two categories of non-BIA programs are eligible for self-governance funding agreements (AFAs):

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by DOI that is ''otherwise available to Indian tribes or Indians,'' can be administered by a tribal government through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Section 403(b)(2) also specifies ''nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided by law.''

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of ''special geographic, historical, or cultural significance'' to a self-governance tribe.

Under section 403(k) of the Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, we will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

Response to Comments

The Office of Self-Governance requested comments on the proposed list on June 14, 2006. A number of editorial and technical changes were provided by Interior's bureaus and incorporated into this Notice. While the Notice of June 14, 2006, illustrated all eligible non-BIA programs for DOI, this Notice is particular to the Bureau of Reclamation.

II. Eligible Non-BIA Programs of the Bureau of Reclamation

Below is a listing of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either ''otherwise available to Indians'' under Title I and not precluded by any other law, or may have ''special geographic, historical, or cultural significance'' to a participating tribe. The list represents the most current information on programs potentially available to tribes under a self-governance funding agreement.

The Bureau of Reclamation will also consider for inclusion in funding agreements other programs or activities not included below, but which, upon

request of a self-governance tribe, the Bureau of Reclamation determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin such discussions.

The Bureau of Reclamation operates a wide range of water resource management projects for hydroelectric power generation, municipal and industrial water supplies, flood control, outdoor recreation, enhancement of fish and wildlife habitats, and research. Most of the Bureau of Reclamation's activities involve construction, operation and maintenance, and management of water resources projects and associated facilities. Components of the following water resource management and construction projects may be eligible for inclusion in a self-governance funding agreement.

1. Klamath Project, California and Oregon.
2. Trinity River Restoration Project, California and Oregon.
3. Central Arizona Project, Arizona and New Mexico.
4. Drought Relief, 17 Reclamation States.
5. Rocky Boy's/North Central Montana Regional Water System, Montana.
6. Indian Water Rights Settlement Projects, as Congressionally authorized.

For questions regarding self-governance contact Mr. Richard Ives, Director, Native American and International Affairs Office, Bureau of Reclamation, 1849 C Street, NW., MS–7069–MIB, Washington, DC 20240, telephone 202–513–0625, fax 202–513–0311.

III. Programmatic Targets

During Fiscal Year 2007, upon request of a self-governance tribe, the Bureau of Reclamation will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: February 21, 2007.

Mark Limbaugh,

Assistant Secretary—Water and Science.

[FR Doc. 07–1323 Filed 3–16–07; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

[OMB Number 1103–0018]

Justice Management Division; Agency Information Collection Activities; Proposed Collection: Common Request

ACTION: 60-Day notice of information collection under review: extension of previously approved collection; Department of Justice procurement blanket clearance.

The Department of Justice, Justice Management Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until May 18, 2007.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Larry Silvis (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Larry Silvis, (202) 616–3754, Management and Planning Staff, Room 1400, National Place Building, 1331 Pennsylvania Avenue, NW., Wash., DC 20530. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

—*Type of information collection:* Extension of Current Collection.

—*The title of the form/collection:* Department of Justice Procurement Blanket Clearance.

—*The agency form number, if any, and applicable component of the Department sponsoring the collection:* Procurement Solicitation Documents, Justice Management Division, Department of Justice.

—Affected public who will be asked or required to respond, as well as a brief abstract.

Primary: Commercial organizations and individuals who voluntarily submit offers and bids to compete for contract awards to provide supplies and services required by the Government. All work statements and pricing data are required to evaluate the contractors bid or proposal.

—*An estimate of the total number of respondents and the amount of time for an average respondent to respond:* 5,996 respondents, 20 hours average response time.

—*An estimate of the total public burden (in hours) associated with this collection:* 119,920 hours annually.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: March 13, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–4906 Filed 3–16–07; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,034, TA–W–61,034A, TA–W–61,034B]

American Identity, Inc., Orange City, IA; American Identity, Inc., Hawarden, IA; and American Identity, Inc., Marcus, IA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 27, 2007 in response to a petition filed by a company official on behalf of workers at American Identity, Inc., Orange City, Iowa (TA–W–61,034); Hawarden, Iowa (TA–W–61,034A) and Marcus, Iowa (TA–W–61,034B).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of March 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–4999 Filed 3–16–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,918; TA–W–60,918A]

Bosal Industries Georgia, a Subsidiary of Bosal International North America Lavonia, GA and Bosal Industries Tennessee, a Subsidiary of Bosal International North America, Columbia, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 8, 2007 in response to a petition filed by a Company Official and on behalf of workers at Bosal Industries Georgia, a subsidiary of Bosal International North America, Lavonia, Georgia (TA–W–60,918) and Bosal Industries Tennessee, a subsidiary of Bosal International North America, Columbia, Tennessee (TA–W–60,918A).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 9th day of March, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–4998 Filed 3–16–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,802]

Collins and Aikman; Farmington, NH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2007 in response to a petition filed by a company official on behalf of workers at Collins and Aikman, Farmington, New Hampshire. The workers at the subject facility produce interior car parts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 12th day of March 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–4997 Filed 3–16–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,499]

Eaton Corporation, Engine Air Management Operations; Belmond, IA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Eaton Corporation, Engine Air Management Operations, Belmond, Iowa. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–60,499; Eaton Corporation, Engine Air Management Operations, Belmond, Iowa (March 8, 2007).

Signed at Washington, DC this 9th day of March 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–5001 Filed 3–16–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 29, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 29, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 13th day of March 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA Petitions Instituted Between 3/5/07 and 3/9/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61057	Ingersoll Rand (USW)	Gwinner, ND	03/05/07	03/03/07
61058	Vishay Angstrohm Precision, Inc. (Wkrs)	Hagerstown, MD	03/05/07	02/19/07
61059	CPC Local Cartage LLC (Wkrs)	St. Louis, MO	03/05/07	03/01/07
61060	Latronics Corporation (Union)	Latrobe, PA	03/05/07	02/28/07

APPENDIX—Continued

[TAA Petitions Instituted Between 3/5/07 and 3/9/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61061	IBM (Wkrs)	Hazelwood, MO	03/05/07	03/01/07
61062	Logistic Services, Inc. (State)	Oklahoma City, OK	03/05/07	02/17/07
61063	General Motors Metal Fabrication Division (Wkrs)	Mansfield, OH	03/05/07	03/03/07
61064	LuMend Inc. (State)	Redwood City, CA	03/06/07	03/01/07
61065	Freight Car America (USWA)	Johnstown, PA	03/06/07	03/05/07
61066	ITW Plastic (Comp)	Shelby Township, MI	03/06/07	02/19/07
61067	Johnson Controls (Comp)	Lancaster, SC	03/06/07	02/19/07
61068	Microfibres, Inc (Comp)	Pawtucket, RI	03/06/07	03/05/07
61069	Quaker Fabric Corporation of Fall River (State)	Fall River, MA	03/06/07	03/02/07
61070	Greenfield Research Inc. (Comp)	Greenfield, OH	03/06/07	03/02/07
61071	American Camshaft Specialties, Inc (Comp)	Grand Haven, MI	03/06/07	03/06/07
61072	Jefferson City Manufacturing, Inc. (Wkrs)	Jefferson City, MO	03/06/07	03/06/07
61073	Bassett Furniture Industries (Comp)	Bassett, VA	03/06/07	03/06/07
61074	Fleetwood Travel Trailers of Kentucky (Wkrs)	Campbellsville, KY	03/07/07	02/28/07
61075	Emerald Performance Chemical (Wkrs)	Kalama, WA	03/07/07	03/06/07
61076	Durham Manufacturing (Comp)	Fort Payne, AL	03/07/07	03/05/07
61077	Adias International (27410)	Portland, OR	03/07/07	02/26/07
61078	U.S. Traffic Corporation a Quixote Company (State)	Santa Fe Spring, CA	03/08/07	03/07/07
61079	Western Union LLC (State)	Englewood, CO	03/08/07	03/07/07
61080	A.O. Smith Electrical Products Company (Comp)	McMinnville, TN	03/08/07	03/01/07
61081	SE Wood Products Inc. (Wkrs)	Colville, WA	03/08/07	03/07/07
61082	Technicolor Home Entertainment Services (Comp)	Camarillo, CA	03/09/07	02/22/07
61083	Intel Corporation (Wkrs)	Newark, CA	03/09/07	02/28/07
61084	Renfro Corporation (Comp)	Mt. Airy, NC	03/09/07	03/08/07
61085	Verizon Business (Wkrs)	Tulsa, OK	03/09/07	03/08/07
61086	Delta Consolidated Inc. (Wkrs)	Raleigh, NC	03/09/07	03/08/07
61087	Haz-Waste (Union)	St. Louis, MO	03/09/07	03/08/07
61088	Evans Rule (Comp)	Charleston, SC	03/09/07	03/08/07

[FR Doc. E7–5000 Filed 3–16–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,530]

Tower Automotive, Inc.; Upper Sundusky, OH; Notice of Revised Determination on Reconsideration

By application of February 19, 2007 a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA).

The initial investigation resulted in a negative determination signed on February 1, 2007 was based on the finding that imports of automotive suspension components and steel stampings did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial was published in the **Federal Register** on February 14, 2007 (72 FR 7088).

In the request for reconsideration, the petitioner provided additional information regarding the subject firm's customers and requested an investigation relating to secondary impact concerning the subject firm as an upstream supplier in the production of fabric. A review of the new facts determined that the workers of the subject firm may be eligible for TAA on the basis of a secondary upstream supplier impact.

The Department conducted an investigation of subject firm workers on the basis of secondary impact. It was revealed that Tower Automotive, Inc., Upper Sandusky, Ohio supplied automotive suspension components and steel stampings that were used in the production of motor vehicles, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that all workers of Tower Automotive, Inc., Upper Sandusky, Ohio qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Tower Automotive, Inc., Upper Sandusky, Ohio, who became totally or partially separated from employment on or after December 5, 2005, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of March 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5002 Filed 3–16–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Survey of Occupational Injuries and Illnesses.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before May 18, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The Commissioner of Labor Statistics has been delegated the responsibility for ''Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics.'' The BLS fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating State statistical agencies. The BLS Survey of Occupational Injuries and Illnesses provides the Nation's primary indicator of the progress towards achieving the goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry which can be compared to prior years to produce measures of the rate of change. These data are used to assess the Nation's progress in improving the safety and health of America's work places; to prioritize scarce Federal and State resources; to guide the development of injury and illness prevention strategies; and to support Occupational Safety and Health Administration (OSHA) and State safety and health standards and research. Data are essential for evaluating the effectiveness of Federal and State programs for improving work place safety and health. For these reasons, it is necessary to provide estimates separately for participating States.

II. Current Action

Office of Management and Budget clearance is being sought for the Survey of Occupational Injuries and Illnesses. The survey measures the overall rate of occurrence of work injuries and illnesses by industry. For the more serious injuries and illnesses, those with days away from work, the survey provides detailed information on the injured/ill worker (age, sex, race, industry, occupation, and length of service), the time in shift, and the circumstances of the injuries and illnesses classified by standardized codes (nature of the injury/illness, part of body affected, primary and secondary sources of the injury/illness, and the event or exposure which produced the injury/illness).

Beginning with survey year 2008, the BLS will collect data from State and Local government agencies in all States to support both State and national estimates. Until now, the Survey of Occupational Injuries and Illnesses has been restricted to producing national estimates for the private sector only. Consequently, there have been no national estimates of workplace injuries and illnesses sustained by State and local government workers, including those in such relatively high hazard and high profile occupations as police, firefighters, paramedics, and other public health workers. The BLS regards the collection of these data as a significant expansion in its overall coverage of the American workplace. The BLS will send a letter explaining that the survey is voluntary for State and local government agencies in States that do not require this collection of data. The number of extra sample units needed for State and local government data is approximately 7,000.

Beginning with the 2008 survey year, the BLS will test collection of injury and illness cases that require only days of job transfer or restriction. In the two decades prior to the OSHA recordkeeping changes in 2002, incidence rates for cases with days away from work decreased significantly, while incidence rates for cases with only restricted work activity increased significantly. Since the BLS presently collects case and demographic data only for cases with days away from work, data are not obtained about a growing class of injury and illness cases. If the test(s) prove successful, the BLS will explore implementing this practice for additional States beginning with survey year 2009. The BLS regards the collection of these cases with only job transfer or restriction as significant in its coverage of the American workforce.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

Type of Review: Revision of currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Farms; State, local or tribal government.

Form	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
BLS 9300	230,000	Annually	230,000	.4	91,666
Pre-notification Package	175,000 out of 230,000	Annually	175,000 out of 230,000	1.35	235,833
Totals	230,000		230,000		327,499

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 14th day of March 2007.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–5004 Filed 3–16–07; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (1110).

Date and Time: April 19, 2007; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Joann Roskoski, Executive Officer, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *Tel No.:* (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda:

- Budget Update and Implications.
- Systems Biology and Leading Edge Discussions.
- Undergraduate Education in the Biological Sciences.
- Open Discussion.

Dated: March 13, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–4878 Filed 3–16–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: April 11, 2007, 9 a.m.–5 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Alan Tessier, National Science Foundation, Suite 635, 4201 Wilson Blvd, Arlington, Virginia 22230, Phone 703–292–7198.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda:

Introduction of New Members.
Update on recent NSF environmental activities.
Reports from AC members on ERE activities in NSF Directorates.
Discussion of Future AC/ERE activities.
Establishment of AC/ERE Task Groups.
Meeting with the Director (or Representative).

Dated: March 13, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–4879 Filed 3–16–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Power Company LLC, et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–9 and NPF–11 issued to Duke Power Company LLC, et al., for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would approve changes to the current licensing bases for the McGuire Nuclear Station, Units 1 and 2, emergency core cooling system containment sump strainers.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

Implementation of the proposed amendment does not significantly increase the probability or the consequences of an accident previously evaluated. The ECCS [emergency core cooling system] containment sump functions in the mitigation of a Loss of Coolant Accident (LOCA). It is not an accident initiator.

Commitments to Regulatory Guide 1.82, Rev 0, as currently described in the UFSAR [Updated Final Safety Analysis Report], are being revised to establish appropriate exceptions associated with the modified ECCS sump strainer design. This modified ECCS containment sump assembly, consisting of a complex geometry, and crediting all effective strainer surface area, was designed using the methodology contained in NEI 04–07, ''Pressurized Water Reactor Sump Performance Evaluation Methodology,'' Rev 0, and the associated NRC [Nuclear Regulatory Commission] Safety Evaluation Report.

Removal of the implied licensing basis requirement to physically separate the containment sump into two halves or provide ECCS train separation within the same containment sump will not impact the assumptions made in Chapter 15 of the McGuire UFSAR. There are no changes in any failure mode or effects analysis associated with this change. Since there are no credible failures which could result in the introduction of debris within the strainer assembly, the need to provide this physical separation is not warranted.

Although the configurations of the existing ECCS containment sump trash racks and screen and the replacement sump strainer assemblies are different, they serve the same fundamental purpose of passively removing debris from the sump's suction supply of the supported system pumps. Removal of trash racks does not impact the adequacy of the pump NPSH [net positive suction head] assumed in the safety analysis. Likewise, the change does not reduce the reliability of any supported systems or introduce any new system interactions. The greatly increased surface area of the modified strainer is designed to reduce head loss.

Thus, based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment will not create the possibility of a new or different kind of accident. The ECCS containment sump strainer serves as a passive component of the ECCS accident mitigation system. It is, therefore, not an accident initiator. The modified design requirements result in a strainer that performs the same functions in the same manner as the original design, such that no different kind of accident is created.

A change to McGuire Technical Specification Surveillance Requirement [SR] 3.5.2.8 does not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the containment system, fuel cladding, and the reactor coolant system will not be impacted by the proposed change.

Duke's [the licensee's] evaluation concludes that there are no credible failure mechanisms applicable to the modified ECCS containment sump strainer design. The revised design requirements result in enhanced strainer performance under more conservative debris loading assumptions.

The proposed change to Technical Specification SR 3.5.2.8 will have no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. The proposed change does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity.

Thus, it is concluded that the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. 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.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board

Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee, Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church St., EC07H, Charlotte, NC 28202.

For further details with respect to this action, see the application for amendment dated March 8, 2007, which is available for public inspection at the Commission's 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 from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of March 2007.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Sr. Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–4941 Filed 3–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meetings

DATE: Weeks of March 19, 26, April 2, 9, 16, 23, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 19, 2007

Tuesday, March 20, 2007

1:30 p.m.

Briefing on Office of Information Services (OIS) Programs, Performance, and Plans (Public Meeting) (Contact: Edward Baker, 301 415–8700).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, March 22, 2007

12:55 p.m.

Affirmation Session (Public Meeting) (Tentative).

a. Consumers Energy Company, *et al.* (Palisades Nuclear Plant); License Transfer Application (Tentative).

Week of March 26, 2007—Tentative

Tuesday, March 27, 2007

2:55 p.m.

Affirmation Session (Public Meeting) (Tentative).

a. System Energy Resources, Inc. (Early Site Permit for Grand Gulf

ESP) (Tentative).

Thursday, March 29, 2007

9:25 a.m.
Affirmation Session (Public Meeting) (Tentative).
a. CBS Corporation's Petition for Hearing Regarding an NRC Staff Decision not to Docket a CBS Request for an Order that Would Change Decontamination Standards Governing a Westinghouse Materials License at Waltz Mill (Tentative).

9:30 a.m.
Discussion of Management Issues (Closed—Ex. 2).

1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1, 3, & 9).

Week of April 2, 2007—Tentative

There are no meetings scheduled for the Week of April 2, 2007.

Week of April 9, 2007—Tentative

There are no meetings scheduled for the Week of April 9, 2007.

Week of April 16, 2007—Tentative

Monday, April 16, 2007

1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1, 2, & 3).

Tuesday, April 17, 2007

1 p.m.
Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting). (*Contact:* Ann Ramey-Smith, 301 415–6877.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 23, 2007—Tentative

There are no meetings scheduled for the Week of April 23, 2007.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

Additional Information

By a vote of 5–0 on March 13 and 14, 2007, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Affirmation of ''Motion for Reconsideration of Entergy Nuclear Vermont Yankee, LLC, & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station); Entergy Nuclear Generation Company & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI–07–3 (Jan. 22, 2007)'' be held March 15, 2007, and on less than one week's notice to the public. This item was previously scheduled for affirmation on March 22, 2007.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, *TDD:* 301–415–2100, or by e-mail at *DLC@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 14, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–1342 Filed 3–15–07; 12:34 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specification Improvement Regarding Deletion of E Bar Definition and Revision to Reactor Coolant System Specific Activity Technical Specification Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability

SUMMARY: Notice is hereby given that the staff of the U.S. Nuclear Regulatory Commission (NRC) has prepared a model license amendment request (LAR), model safety evaluation (SE), and model proposed no significant hazards consideration (NSHC) determination related to deletion of the E Bar definition and revision to reactor coolant system (RCS) specific activity technical specification. This request revises the RCS specific activity specification for pressurized water reactors to utilize a new indicator, Dose Equivalent Xenon-133 instead of the current indicator known as E Bar.

The purpose of these models is to permit the NRC staff to efficiently process amendments to incorporate these changes into plant-specific technical specifications (TS) for Babcock and Wilcox, Westinghouse, and Combustion Engineering pressurized water reactors (PWRs). Licensees of nuclear power reactors to which the models apply can request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the model LAR, model SE and NSHC determination to its plant.

DATES: The NRC staff issued a **Federal Register** Notice (71 FR 67170, November 20, 2006) which provided a model LAR, model SE, and model NSHC related to deletion of E Bar definition and revision to RCS specific activity technical specification; similarly the NRC staff herein provides a revised model LAR, a revised model SE, and a revised model NSHC. The NRC staff can most efficiently consider applications based upon the model LAR, which references the model SE, if the application is submitted within one year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Trent Wertz, Mail Stop: O–12H2, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1568.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process (CLIIP) for Adopting Standard Technical Specifications Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the Standard Technical Specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the

change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the NRC staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves replacement of the current PWR TS 3.4.16 limit on RCS gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe-133 (DEX) definition that would replace the current E Bar average disintegration energy definition. In addition, the current dose equivalent I–131 (DEI) definition would be revised to allow the use of additional thyroid dose conversion factors (DCFs). By letter dated September 13, 2005, the Technical Specification Task Force (TSTF) proposed these changes for incorporation into the STS as TSTF–490, Revision 0, which was referenced in the **Federal Register** Notice (FRN) 71 FR 67170, of November 20, 2006, and can be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs.html.*

Applicability

These proposed changes will revise the definition of DOSE EQUIVALENT I–131, delete the definition of ''E Bar,'' AVERAGE DISINTEGRATION ENERGY, add a new definition for DOSE EQUIVALENT XE–133, and revise LCO 3.4.16 for Babcock and Wilcox, Westinghouse, and Combustion Engineering PWRs.

To efficiently process the incoming license amendment applications, the NRC staff requests that each licensee applying for the changes addressed by TSTF–490, Revision 0, using the CLIIP submit an LAR that adheres to the following model. Any variations from the model LAR should be explained in the licensee's submittal. Variations from the approach recommended in this notice may require additional review by the NRC staff, and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–490.

Public Notices

The staff issued a **Federal Register** Notice (71 FR 67170, November 20, 2006) that requested public comment on the NRC's pending action to delete the E Bar definition and revise the RCS specific activity technical specification. In particular, following an assessment and draft safety evaluation by the NRC staff, the staff sought public comment on proposed changes to the STS, designated TSTF–490 Revision 0. The TSTF–490 Revision 0 can be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs.html.* TSTF–490 Revision 0 may be examined, and/or copied for a fee, at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room) at *http://www.nrc.gov/reading-rm/adams.html.*

In response to the notice soliciting comments from the interested members of the public about NRC's pending action to delete the E Bar definition and revise the RCS specific activity technical specification, the staff received four sets of comments (from licensees and the TSTF Owners Groups, representing the licensees). Specific comments on the model SE, model LAR, and the model NSHC were offered, and are summarized and discussed below:

1. *Comment:* In Sections 3.1.4 and 3.1.7 the model safety evaluation states: ''In MODES 5 and 6, the steam generators are not used for decay heat removal, the RCS and steam generators are depressurized, and primary to secondary leakage is minimal.'' However, using the Westinghouse Standard Technical Specifications as an example, NUREG–1431, Vol. 2, Rev. 3.0, Bases 3.4.7 (RCS Loops-Mode 5, Loops Filled) states ''In MODE 5 with the RCS loops filled, the primary function of the reactor coolant is the removal of decay heat and transfer this heat either to the steam generator (SG) secondary side coolant via natural circulation (Ref. 1) or the component cooling water via the residual heat removal (RHR) heat exchangers.'' Therefore, the steam generators are taken credit for as a means of removing decay heat during MODE 5. Additionally, the RCS may be pressurized during MODE 5. The statement as written in the model safety evaluation may prevent licensees from stating that their application is consistent with the model technical evaluation.

Response: The comment addresses the MODES for which the LCO would be applicable. The NRC staff agrees that the statement in sections 3.1.4 and 3.1.7 does not acknowledge the condition of MODE 5 with the RCS loops filled. The Model SE will be modified to account for this condition.

2. *Comment:* There is currently one Technical Specification (TS) 3.4.16 limit on RCS gross specific activity, not ''limits''. The single limit is 100/E Bar in all 3 affected STS NUREGs. There are two places that refer to limits (plural).

Response: This editorial comment is correct, and the Supplemental Information section and the Model LAR will be revised accordingly.

3. *Comment:* In the Model SE, Section 2.0: Correct the title of TID 14844. ''Reactor'' is singular in the title.

Response: This editorial comment is correct, and the Model SE will be revised accordingly.

4. *Comment:* In the Model SE, Section 3.1.1: The list of Dose Conversion Factor (DCF) references should be bracketed since this change will be subject to plant specific considerations. The optional DCF reference included in TSTF–490, and discussed in the traveler's justification section 3.0 (paragraph 2, lines 4–9), for alternate source term plants should be included here as follows:

] or [Committed Dose Equivalent (CDE) or Committed Effective Dose Equivalent (CEDE) dose conversion factors from Table 2.1 of EPA Federal Guidance Report No. 11.]

Response: The Model SE endorsed the use of DCFs from Table 2.1 of FGR–11, 1988, ''Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation, Submersion, and Ingestion.'' As stated in the model SE, it is incumbent on the licensee to ensure that the DCFs used in the determination of DEI are consistent with the DCFs used in the applicable dose consequence analyses. As such, the references for the applicable DCFs would indeed be plant specific and the model SE has been changed accordingly.

5. *Comment:* In the model SE, Section 3.1.2: All noble gas isotope lists and DCF citations should be bracketed since these changes are subject to plant specific considerations. The 2nd paragraph is missing a forward slash mark between the words ''and'' and ''or'' in the text ''by tritium and corrosion and activation products * * *''

Response: This editorial comment is correct, and the Model SE will be corrected.

6. *Comment:* In the Model SE, Section 3.1.3: The discussion on revised Required Action A.1 should be relocated to Model SE Section 3.1.5 that discusses the changes to TS 3.4.16 condition A.

Response: The NRC staff agrees that the discussion on revised Required Action A.1 should be relocated. The Model SE will be updated to reflect the change.

7. *Comment:* In the Model SE Section 3.1.6: This section states that Condition ''C'' is replaced with a new Condition ''B''. This is only true for the B&W and CE STS NUREGs (1430 and 1432). It is not true for the Westinghouse STS NUREG–1431, and it should also be noted that the Westinghouse plants developed this traveler for submittal to the NRC. This section should state that ''TS 3.4.16 Condition B [in NUREG–1431; C in NUREG–1430 and NUREG–1432] is replaced with a new Condition B for DEX not within limits.''

Section 3.1.6 should also discuss the addition of the LCO 3.0.4.c Note to revised Required Action B.1, consistent with the Model Application, Enclosure 1, Section 2.0, item C. Suggested wording that could be used for this purpose is:

A Note is also added to the revised Required Action B.1 that states LCO 3.0.4.c is applicable. This Note would allow entry into a Mode or other specified condition in the LCO Applicability when LCO 3.4.16 is not being met and is the same Note that is currently stated for Required Actions A.1 and A.2. The proposed Note would allow entry into the applicable Modes when the DEX is not within its limit; in other words, the plant could go up in the Modes from Mode 4 to Mode 1 (power operation) while the DEX limit is exceeded and the DEX is being restored to within its limit. This Mode change allowance is acceptable due to the significant conservatism incorporated into the DEX specific activity limit, and the ability to restore transient specific activity excursions while the plant remains at, or proceeds to, power operation.

Response: The NRC staff agrees with the wording with this editorial comment and the Model SE will be updated to reflect the differences in the NUREGs. Also, a discussion concerning the LCO 3.0.4.c note to required Action B.1 will be added to the Model SE Section 3.1.6.

8. *Comment:* In the Model SE, Section 3.1.8: This section incorrectly states that revised SR 3.4.16.1 has a new LCO 3.0.4.c Note. It should state that SR 3.4.16.1 has a new performance modifying Note that reads: ''Only required to be performed in Mode 1.'' The application of this style of Note is discussed in Example 1.4–5 in the latest revision of the STS NUREGs. The LCO 3.0.4.c Note addition applies only to revised Required Action B.1

Response: The NRC staff believes that the new Note for SR 3.4.16.1 is consistent with Example 1.4–5 and the Note in SR 3.4.16.2 and therefore does not need to be changed.

9. *Comment:* In the Model SE, Section 3.1.2 states ''The determination of DOSE EQUIVALENT XE–133 shall be performed using effective dose conversion factors for air submersion listed in Table III.1 of EPA Federal Guidance Report No. 12 or the average gamma disintegration energies as provided in ICRP Publication 38, ''Radionuclide Transformations'' or similar source.'' What exactly is ''similar source''? Does ''similar source'' apply to average gamma energies or to the DCFs such as published in Reg. Guide 1.109?

Response: The selection of the dose conversion factors used in the definition of DEX should be consistent with the dose conversion factors currently employed in the licensee's dose consequence analyses and as such the reference for the dose conversion factors or the source of the gamma energies used in the definition will be site specific. Brackets will be placed around the references to indicate where site specific information should be included.

10. *Comment:* In the Model SE, Section 3.1.2 states ''* * * the calculation of DEX is based on the acute dose to the whole body and considers the noble gases KR–85M, KR–87, KR–88, XE–133M, XE–133, XE–135M, XE–135 and XE–133 * * *''. Under the same Section two additional nuclides are added to the new definition for E-AVERAGE DISINTEGRATION ENERGY; Kr-85 and XE–131M. The addition of the additional nuclides appears to conflict with the preceding technical Evaluation. Is it the expectation that these two nuclides be added to the DEX calculation in addition to those listed in the preceding section?

Response: The selection of the isotopes used in the definition of DEX will be site specific and based on the dose significant noble gas isotopes identified in the appropriate DBA dose consequence analyses. The list of noble gas isotopes will be placed in brackets to indicate that the actual list will be site specific.

11. *Comment:* The title of TSTF–490 is not capitalized consistently and is not consistent with the submitted Traveler. The title of TSTF–490 is ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec.'' Note that there is no hyphen used in the term ''E Bar.''

Response: This editorial comment is correct, and the Model SE will be corrected.

12. *Comment:* In the proposed NSHC, to be consistent with 10 CFR 50.92(c)(2), the title of Criterion 2 should be revised to add the word ''Accident'' before ''Previously Evaluated.'' Specifically, it should state, ''The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.''

Response: This editorial comment is correct, and the proposed NSHC will be corrected.

13. *Comment:* In the Model LAR it states, ''I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct.'' This statement is not consistent with the recommended statement given in RIS 2001–18, ''Requirements for Oath and Affirmation.'' RIS 2001–18 recommends the statement, ''I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct.'' Note that RIS 2001–18 states that this statement must be used verbatim. We recommend that the Model Application be revised to be consistent with RIS 2001–18.

Response: The statement in the Model LAR is consistent with RIS 2001–18. The purpose of RIS 2001–18 was to inform licensees that there is an alternative to the oath or affirmation statement contained in 28 U.S.C. 1746. Both are considered acceptable. The NRC staff includes only the first option listed in 28 U.S.C. 1746 for brevity.

14. *Comment:* In the Model LAR, Section 8.0, the second reference should be numbered. Note that Section 4.0 refers to References 1 and 2.

Response: The references in Section 8.0 are numbered, however, for clarification, the Notice for Comment and the Notice for Availability will be listed as separate references.

Dated at Rockville, Maryland this 8th day of March, 2007.

For The Nuclear Regulatory Commission.

Timothy J. Kobetz,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

Attachment:

FOR INCLUSION ON THE TECHNICAL SPECIFICATION WEB PAGE THE FOLLOWING EXAMPLE OF AN APPLICATION WAS PREPARED BY THE NRC STAFF TO FACILITATE THE ADOPTION OF TECHNICAL SPECIFICATION TASK FORCE (TSTF)

TRAVELER TSTF–490, REVISION 0 ''DELETION OF E BAR DEFINITION AND REVISION TO RCS SPECIFIC ACTIVITY TECH SPEC.'' THE MODEL PROVIDES THE EXPECTED LEVEL OF DETAIL AND CONTENT FOR AN APPLICATION TO ADOPT TSTF–490, REVISION 0. LICENSEES REMAIN RESPONSIBLE FOR ENSURING THAT THEIR ACTUAL APPLICATION FULFILLS THEIR ADMINISTRATIVE REQUIREMENTS AS WELL AS NRC REGULATIONS.

U.S. Nuclear Regulatory Commission,
Document Control Desk,
Washington, DC 20555.

SUBJECT: PLANT NAME, DOCKET NO. 50–[xxx,] RE: APPLICATION FOR TECHNICAL SPECIFICATION IMPROVEMENT TO ADOPT TSTF–490, REVISION 0, ''DELETION OF E BAR DEFINITION AND REVISION TO RCS SPECIFIC ACTIVITY TECH SPEC''

Dear Sir or Madam: In accordance with the provisions of Section 50.90 of Title 10 of the Code of Federal Regulations (10 CFR), [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.]. The proposed changes would replace the current pressurized water reactor (PWR) Technical Specification (TS) 3.4.16 limit on reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe–133 (DEX) definition that would replace the current E Bar average disintegration energy definition. In addition, the current dose equivalent I–131 (DEI) definition would be revised to allow the use of additional thyroid dose conversion factors (DCFs).

The changes are consistent with NRC-approved Industry Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–490, Revision 0, ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec.'' The availability of this TS improvement was announced in the **Federal Register** on [DATE] ([ ]FR[ ]) as part of the consolidated line item improvement process (CLIIP).

Enclosure 1 provides a description and assessment of the proposed changes, as well as confirmation of applicability. Enclosure 2 provides the existing TS pages and TS Bases marked-up to show the proposed changes. Enclosure 3 provides final TS pages and TS Bases pages.

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS]. In accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. [Note that request may be notarized in lieu of using this oath or affirmation statement]. If you should have any questions regarding this submittal, please contact [ ].

Sincerely,

Name, Title

Enclosures:
1. Description and Assessment of Proposed Changes
2. Proposed Technical Specification Changes and Technical Specification Bases Changes
3. Final Technical Specification and Bases pages

cc: NRR Project Manager
Regional Office
Resident Inspector
State Contact
ITSB Branch Chief

1.0 Description

This letter is a request to amend Operating License(s) [LICENSE NUMBER(S)] for [PLANT/UNIT NAME(S)].

The proposed changes would replace the current limits on primary coolant gross specific activity with limits on primary coolant noble gas activity. The noble gas activity would be based on DOSE EQUIVALENT XE–133 and would take into account only the noble gas activity in the primary coolant. The changes were approved by the NRC staff Safety Evaluation (SE) dated September 27, 2006 (ADAMS ML062700612) (Reference 1). Technical Specification Task Force (TSTF) change traveler TSTF–490, Revision 0, ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec'' was announced for availability in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 Proposed Changes

Consistent with NRC-approved TSTF–490, Revision 0, the proposed TS changes:

- Revise the definition of DOSE EQUIVALENT I–131.
- Delete the definition of ''E Bar, AVERAGE DISINTEGRATION ENERGY.
- Add a new TS definition for DOSE EQUIVALENT XE–133.
- Revise LCO 3.4.16, ''RCS Specific Activity'' to delete references to gross specific activity; add limits for DOSE EQUIVALENT I–131 and DOSE EQUIVALENT XE–133; and delete Figure 3.4.16–1, ''Reactor Coolant DOSE EQUIVALENT I–131 Specific Activity Limit versus Percent of RATED THERMAL POWER.''
- Revise LCO 3.4.16 ''Applicability'' to specify the LCO is applicable in MODES 1, 2, 3, and 4.
- Modify ACTIONS Table as follows:

A. Condition A is modified to delete the reference to Figure 3.4.16–1, and define an upper limit that is applicable at all power levels.

B. NUREG–1430 and NUREG–1432 ACTIONS are reordered, moving Condition C to Condition B to be consistent with the Writer's Guide.

C. Condition B (was Condition C in NUREG–1430 and NUREG–1432) is modified to provide a Condition and Required Action for DOSE EQUIVALENT XE–133 instead of gross specific activity. The Completion Time is changed from 6 hours to 48 hours. A Note allowing the applicability of LCO 3.0.4.c is added, consistent with the Note to Required Action A.1.

D. Condition C (was Condition B in NUREG–1430 and NUREG–1432) is modified based on the changes to Conditions A and B and to reflect the change in the LCO Applicability.

- Revise SR 3.4.16.1 to verify the limit for DOSE EQUIVALENT XE–133. A Note is added, consistent with SR 3.4.16.2 to allow entry into MODES 2, 3, and 4 prior to performance of the SR.
- Delete SR 3.4.16.3.

3.0 Background

The background for this application is as stated in the model SE in NRC's Notice of Availability published on [DATE]([ ] FR [ ]), the NRC Notice for Comment published on [DATE] ([ ] FR [ ]), and TSTF–490, Revision 0.

4.0 Technical Analysis

[LICENSEE] has reviewed References 1, 2 and 3, and the model SE published on [DATE] ([ ]FR [ ]) as part of the CLIIP Notice for Comment. [LICENSEE] has applied the methodology in Reference 1 to develop the proposed TS changes. [LICENSEE] has also concluded that the justifications presented in TSTF–490, Revision 0 and the model SE prepared by the NRC staff are applicable to [PLANT, UNIT NOS.], and justify this amendment for the incorporation of the changes to the [PLANT] TS.

5.0 Regulatory Analysis

A description of this proposed change and its relationship to applicable regulatory requirements and guidance was provided in the NRC Notice of Availability published on [DATE] ([ ] FR [ ]), the NRC Notice for Comment published on [DATE] ([ ] FR [ ]), and TSTF–490, Revision 0.

6.0 No Significant Hazards Consideration

[LICENSEE] has reviewed the proposed no significant hazards consideration determination published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIIP. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

7.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental consideration included in the model SE published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented therein are applicable to [PLANT] and the determination is hereby incorporated by reference for this application.

8.0 References

1. NRC Safety Evaluation (SE) approving TSTF–490, Revision 0 dated September 27, 2006.
2. Federal Notice for Comment published on [DATE] ([ ] FR [ ]).
3. Federal Notice of Availability published on [DATE] ([ ] FR [ ]).

Model Safety Evaluation

U.S. Nuclear Regulatory Commission,
Office of Nuclear Reactor Regulation,

Technical Specification Task Force TSTF–490, Revision 0, ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec''

1.0 Introduction

By letter dated [____, 20_], [LICENSEE] (the licensee) proposed changes to the technical specifications (TS) for [PLANT NAME]. The requested changes are the adoption of TSTF–490, Revision 0, ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec'' for pressurized water reactor (PWR) Standard Technical Specifications (STS). By letter dated September 13, 2005, the Technical Specification Task Force (TSTF) submitted TSTF–490 for Nuclear Regulatory Commission (NRC) staff review. This TSTF involves changes to NUREG–1430, NUREG–1431, and NUREG–1432 STS Section 3.4.16 reactor coolant system (RCS) gross specific activity limits with the addition of a new limit for noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe–133 (DEX) definition that replaces the current E Bar average disintegration energy definition. In addition, the current dose equivalent I–131 (DEI) definition would be revised to allow the use of additional thyroid dose conversion factors (DCFs).

2.0 Regulatory Evaluation

The NRC staff evaluated the impact of the proposed changes as they relate to the radiological consequences of affected design basis accidents (DBAs) that use the RCS inventory as the source term. The source term assumed in radiological analyses should be based on the activity associated with the projected fuel damage or the maximum RCS technical specifications (TS) values, whichever maximizes the radiological consequences. The limits on RCS specific activity ensure that the offsite doses are appropriately limited for accidents that are based on releases from the RCS with no significant amount of fuel damage.

The Steam Generator Tube Rupture (SGTR) accident and the Main Steam Line Break (MSLB) accident typically do not result in fuel damage and therefore the radiological consequence analyses are based on the release of primary coolant activity at maximum TS limits. For accidents that result in fuel damage, the additional dose contribution from the initial activity in the RCS is not normally evaluated and is considered to be insignificant in relation to the dose resulting from the release of fission products from the damaged fuel.

For licensees that incorporate the source term as defined in Technical Information Document (TID) 14844, AEC, 1962, ''Calculation of Distance Factors for Power and Test Reactors Sites,'' in their dose consequence analyses, the NRC staff uses the regulatory guidance provided in NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants,'' Section 15.1.5, ''Steam System Piping Failures Inside and Outside of Containment (PWR),'' Appendix A, ''Radiological Consequences of Main Steam Line Failures Outside Containment,'' Revision 2, for the evaluation of MSLB accident analyses and NUREG–0800, SRP Section 15.6.3, ''Radiological Consequences of Steam Generator Tube Failure (PWR),'' Revision 2, for evaluating SGTR accidents analyses. In addition, the NRC staff uses the guidance from RG 1.195, ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light Water Nuclear Power Reactors,'' May 2003, for those licensees that chose to use its guidance for dose consequence analyses using the TID 14844 source term.

For licensees using the alternative source term (AST) in their dose consequence analyses, the NRC staff uses the regulatory guidance provided in NUREG–0800, SRP Section 15.0.1, ''Radiological Consequence Analyses Using Alternative Source Terms,'' Revision 0, July 2000, and the methodology and assumptions stated in Regulatory Guide (RG) 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors'', July 2000.

The applicable dose criteria for the evaluation of DBAs depends on the source term incorporated in the dose consequence analyses. For licensees using the TID 14844 source term, the maximum dose criteria to the whole body and the thyroid that an individual at the exclusion area boundary (EAB) can receive for the first 2 hours following an accident, and at the low population zone (LPZ) outer boundary for the duration of the radiological release, are specified in Title 10 of the Code of Federal Regulations (10 CFR) Part 100.11. These criteria are 25 roentgen equivalent man (rem) total whole body dose and 300 rem thyroid dose from iodine exposure. The accident dose criteria in 10 CFR 100.11 is supplemented by accident specific dose acceptance criteria in SRP 15.1.5, Appendix A, SRP 15.6.3 or Table 4 of RG 1.195, ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light Water Nuclear Power Reactors,'' May 2003.

For control room dose consequence analyses that use the TID 14844 source term, the regulatory requirement for which the NRC staff bases its acceptance is General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50, ''Control Room''. GDC 19 requires that adequate radiation protection be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident. NUREG–0800, SRP Section 6.4, ''Control Room Habitability System,'' Revision 2, July 1981, provides guidelines defining the dose equivalency of 5 rem whole body as 30 rem for both the thyroid and skin dose. For licensees adopting the guidance from RG 1.196, ''Control Room Habitability at Light Water Nuclear Power Reactors,'' May 2003, Section C.4.5 of RG 1.195, May 2003, states that in lieu of the dose equivalency guidelines from Section 6.4 of NUREG–0800, the 10 CFR 20.1201 annual organ dose limit of 50 rem can be used for both the thyroid and skin dose equivalent of 5 rem whole body.

Licensees using the AST are evaluated against the dose criteria specified in 10 CFR part 50.67(b)(2). The off-site dose criteria are 25 rem total effective dose equivalent (TEDE) at the EAB for any 2-hour period following the onset of the postulated fission product release and 25 rem TEDE at the outer boundary of the LPZ for the duration of the postulated fission product release. In addition, 10 CFR part 50.67(b)(2)(iii) requires that adequate radiation protection be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem TEDE for the duration of the accident.

3.0 Technical Evaluation

3. 1 Technical Evaluation of TSTF–490 TS Changes

3.1.1 Revision to the Definition of DEI

The list of acceptable DCFs for use in the determination of DEI include the following:

- [Table III of TID–14844, AEC, 1962, ''Calculation of Distance Factors for Power and Test Reactor Sites.'']
- [Table E–7 of Regulatory Guide 1.109, Revision 1, NRC, 1977.]
- [ICRP 30,1979, page 192–212, Table titled ''Committed Dose Equivalent in Target Organs or Tissues per Intake of Unit Activity.'']
- [Committed Dose Equivalent (CDE) or Committed Effective Dose Equivalent (CEDE) dose conversion factors from Table 2.1 of EPA Federal Guidance Report No. 11.'']
- [Table 2.1 of EPA Federal Guidance Report No. 11, 1988, ''Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation, Submersion, and Ingestion.'']

Note: It is incumbent on the licensee to ensure that the DCFs used in the determination of DEI are consistent with the applicable dose consequence analyses.

3.1.2 Deletion of the Definition of E Bar and the Addition of a New Definition for DE Xe-133

The new definition for DEX is similar to the definition for DEI. The determination of DEX will be performed in a similar manner to that currently used in determining DEI, except that the calculation of DEX is based on the acute dose to the whole body and considers the noble gases [Kr-85m, Kr-85, Kr-87, Kr-88, Xe-131m, Xe-133m, Xe-133, Xe-135m, Xe-135, and Xe-138] which are significant in terms of contribution to whole body dose. Some noble gas isotopes are not included due to low concentration, short half life, or small dose conversion factor. The calculation of DEX would use either the average gamma disintegration energies for the nuclides or the effective dose conversion factors from Table III.1 of EPA FGR No. 12. Using this approach, the limit on the amount of noble gas activity in the primary coolant would not fluctuate with variations in the calculated values of E Bar. If a specified noble gas nuclide is not detected, the new definition states that it should be assumed the nuclide is present at the minimum detectable activity. This will result in a conservative calculation of DEX.

When E Bar is determined using a design basis approach in which it is assumed that

1.0% of the power is being generated by fuel rods having cladding defects and it is also assumed that there is no removal of fission gases from the letdown flow, the value of E Bar is dominated by Xe-133. The other nuclides have relatively small contributions. However, during normal plant operation there are typically only a small amount of fuel clad defects and the radioactive nuclide inventory can become dominated by tritium and corrosion and/or activation products, resulting in the determination of a value of E Bar that is very different than would be calculated using the design basis approach. Because of this difference, the accident dose analyses become disconnected from plant operation and the limiting condition for operation (LCO) becomes essentially meaningless. It also results in a TS limit that can vary during operation as different values for E Bar are determined.

This change will implement a LCO that is consistent with the whole body radiological consequence analyses which are sensitive to the noble gas activity in the primary coolant but not to other non-gaseous activity currently captured in the E Bar definition. LCO 3.4.16 specifies the limit for primary coolant gross specific activity as 100/E Bar _Ci/gm. The current E Bar definition includes radioisotopes that decay by the emission of both gamma and beta radiation. The current Condition B of LCO 3.4.16 would rarely, if ever, be entered for exceeding 100/E Bar since the calculated value is very high (the denominator is very low) if beta emitters such as tritium (H-3) are included in the determination, as required by the E Bar definition.

TS Section 1.1 definition for E—AVERAGE DISINTEGRATION ENERGY (E Bar) is deleted and replaced with a new definition for DEX which states:

• DOSE EQUIVALENT XE-133 shall be that concentration of Xe–133 (microcuries per gram) that alone would produce the same acute dose to the whole body as the combined activities of noble gas nuclides [Kr-85m, Kr-85, Kr-87, Kr-88, Xe-131m, Xe-133m, Xe-133, Xe-135m, Xe-135, and Xe-138] actually present. If a specific noble gas nuclide is not detected, it should be assumed to be present at the minimum detectable activity. The determination of DOSE EQUIVALENT XE-133 shall be performed using [effective dose conversion factors for air submersion listed in Table III.1 of EPA Federal Guidance Report No. 12, 1993, ''External Exposure to Radionuclides in Air, Water, and Soil'' or the average gamma disintegration energies as provided in ICRP Publication 38, ''Radionuclide Transformations'' or similar source.]''

The change incorporating the newly defined quantity DEX is acceptable from a radiological dose perspective since it will result in an LCO that more closely relates the non-iodine RCS activity limits to the dose consequence analyses which form their bases. **Note:** It is incumbent on the licensee to ensure that the DCFs used in the determination of DEI and the newly defined dex are consistent with the DCFs used in the applicable dose consequence analysis.

3.1.3 LCO 3.4.16, ''RCS Specific Activity''

LCO 3.4.16 is modified to specify that iodine specific activity in terms of DEI and noble gas specific activity in terms of DEX shall be within limits. Currently the limiting indicators are not explicitly identified in the LCO, but are instead defined in current Condition C and Surveillance Requirement (SR) 3.4.16.1 for gross non-iodine specific activity and in current Condition A and SR 3.4.16.2 for iodine specific activity.

The change states ''RCS DOSE EQUIVALENT 1–131 and DOSE EQUIVALENT XE-133 specific activity shall be within limits.'' **Note:** IT IS INCUMBENT ON THE LICENSEE TO ENSURE THAT THE SITE SPECIFIC LIMITS FOR BOTH DEI AND DEX ARE CONSISTENT WITH THE CURRENT SGTR AND MSLB RADIOLOGICAL CONSEQUENCE ANALYSES.

3.1.4 TS 3.4.16 Applicability

TS 3.4.16 Applicability is modified to include all of MODE 3 and MODE 4. It is necessary for the LCO to apply during MODES 1 through 4 to limit the potential radiological consequences of an SGTR or MSLB that may occur during these MODES. In MODE 5 with the RCS loops filled, the steam generators are specified as a backup means of decay heat removal via natural circulation. In this mode, however, due to the reduced temperature of the RCS, the probability of a DBA involving the release of significant quantities of RCS inventory is greatly reduced. Therefore, monitoring of RCS specific activity is not required. In MODE 5 with the RCS loops not filled and in MODE 6 the steam generators are not used for decay heat removal, the RCS and steam generators are depressurized and primary to secondary leakage is minimal. Therefore, the monitoring of RCS specific activity is not required. The change to modify the TS 3.4.16 Applicability to include all of MODE 3 and MODE 4 is necessary to limit the potential radiological consequences of an SGTR or MSLB that may occur during these MODES and is therefore acceptable from a radiological dose perspective.

3.1.5 TS 3.4.16 Condition A

TS 3.4.16 Condition A is revised by replacing the DEI site specific limit ''> [1.0] μCi/gm'' with the words ''not within limit'' to be consistent with the revised TS 3.4.16 LCO format. The site specific DEI limit of ≤ [1.0] μCi/gm is contained in SR 3.4.16.2. This proposed format change will not alter current STS requirements and is acceptable from a radiological dose perspective.

TS 3.4.16 Required Action A.1 is revised to remove the reference to Figure 3.4.16–1 ''Reactor Coolant DOSE EQUIVALENT I–131 Specific Activity Limit versus Percent of RATED THERMAL POWER'' and insert a limit of less than or equal to the site specific DEI spiking limit. The curve contained in Figure 3.4.16–1 was provided by the AEC in a June 12, 1974 letter from the AEC on the subject, ''Proposed Standard Technical Specifications for Primary Coolant Activity.'' Radiological dose consequence analyses for SGTR and MSLB accidents that take into account the pre-accident iodine spike do not consider the elevated RCS iodine specific activities permitted by Figure 3.4.16–1 for operation at power levels below 80% RTP. Instead, the pre-accident iodine spike analyses assume a DEI concentration [60] times higher than the corresponding long-term equilibrium value, which corresponds to the specific activity limit associated with 100% RTP operation. It is acceptable that TS 3.4.16 Required Action A.1 should be based on the short term site specific DEI spiking limit to be consistent with the assumptions contained in the radiological consequence analyses.

3.1.6 TS 3.4.16 Condition B Revision To include Action for DEX Limit

TS 3.4.16 Condition C is replaced with a new Condition B [in NUREG–1431; C in NUREG–1430 and NUREG–1432] for DEX not within limits. This change is made to be consistent with the change to the TS 3.4.16 LCO which requires the DEX specific activity to be within limits as discussed above in Section 3.1.3. The DEX limit is site specific and the numerical value in units of μCi/gm is contained in revised SR 3.4.16.1. The site specific limit of DEX in μCi/gm is established based on the maximum accident analysis RCS activity corresponding to 1% fuel clad defects with sufficient margin to accommodate the exclusion of those isotopes based on low concentration, short half life, or small dose conversion factors. The primary purpose of the TS 3.4.16 LCO on RCS specific activity and its associated Conditions is to support the dose analyses for DBAs. The whole body dose is primarily dependent on the noble gas activity, not the non-gaseous activity currently captured in the E Bar definition.

The Completion Time for revised TS 3.4.16 Required Action B.1 will require restoration of DEX to within limit in 48 hours. This is consistent with the Completion Time for current Required Action A.2 for DEI. The radiological consequences for the SGTR and the MSLB accidents demonstrate that the calculated thyroid doses are generally a greater percentage of the applicable acceptance criteria than the calculated whole body doses. It then follows that the Completion Time for noble gas activity being out of specification in the revised Required Action B.1 should be at least as great as the Completion Time for iodine specific activity being out of specification in current Required Action A.2. Therefore the Completion Time of 48 hours for revised Required Action B.1 is acceptable from a radiological dose perspective. A Note is also added to the revised Required Action B.1 that states LCO 3.0.4.c is applicable. This Note would allow entry into a Mode or other specified condition in the LCO Applicability when LCO 3.4.16 is not being met and is the same Note that is currently stated for Required Actions A.1 and A.2. The proposed Note would allow entry into the applicable Modes from MODE 4 to MODE 1 (power operation) while the DEX limit is exceeded and the DEX is being restored to within its limit. This Mode change is acceptable due to the significant conservatism incorporated into the DEX specific activity limit, the low probability of an event occurring which is limiting due to exceeding the DEX specific activity limit, and the ability to restore

transient specific excursions while the plant remains at, or proceeds to power operation.

3.1.7 TS 3.4.16 Condition C

TS 3.4.16 Condition C is revised to include Condition B (DEX not within limit) if the Required Action and associated Completion Time of Condition B is not met. This is consistent with the changes made to Condition B which now provide the same completion time for both components of RCS specific activity as discussed in the revision to Condition B. The revision to Condition C also replaces the limit on DEI from the deleted Figure 3.4.16–1, with a site specific value of > [60] μCi/gm. This change makes Condition C consistent with the changes made to TS 3.4.16 Required Action A.1.

The change to TS 3.4.16 Required Action C.1 requires the plant to be in MODE 3 within 6 hours and adds a new Required Action C.2 which requires the plant to be in MODE 5 within 36 hours. These changes are consistent with the changes made to the TS 3.4.16 Applicability. The revised LCO is applicable throughout all of MODES 1 through 4 to limit the potential radiological consequences of an SGTR or MSLB that may occur during these MODES. In MODE 5 with the RCS loops filled, the steam generators are specified as a backup means of decay heat removal via natural circulation. In this mode, however, due to the reduced temperature of the RCS, the probability of a DBA involving the release of significant quantities of RCS inventory is greatly reduced. Therefore, monitoring of RCS specific activity is not required. In MODE 5 with the RCS loops not filled and MODE 6, the steam generators are not used for decay heat removal, the RCS and steam generators are depressurized, and primary to secondary leakage is minimal. Therefore, the monitoring of RCS specific activity is not required.

A new TS 3.4.16 Required Action C.2 Completion Time of 36 hours is added for the plant to reach MODE 5. This Completion Time is reasonable, based on operating experience, to reach MODE 5 from full power conditions in an orderly manner and without challenging plant systems and the value of 36 hours is consistent with other TS which have a Completion Time to reach MODE 5.

3.1.8 SR 3.4.16.1 DEX Surveillance

The change replaces the current SR 3.4.16.1 surveillance for RCS gross specific activity with a surveillance to verify that the site specific reactor coolant DEX specific activity is ≤ [X] μCi/gm. This change provides a surveillance for the new LCO limit added to TS 3.4.16 for DEX. The revised SR 3.4.16.1 surveillance requires performing a gamma isotopic analysis as a measure of the noble gas specific activity of the reactor coolant at least once every 7 days, which is the same frequency required under the current SR 3.4.16.1 surveillance for RCS gross non-iodine specific activity. The surveillance provides an indication of any increase in the noble gas specific activity. The results of the surveillance on DEX allow proper remedial action to be taken before reaching the LCO limit under normal operating conditions.

SR 3.4.16.1 is modified by inclusion of a NOTE which permits the use of the provisions of LCO 3.0.4.c. This allowance permits entry into the applicable MODE(S) while relying on the ACTIONS. This allowance is acceptable due to the significant conservatism incorporated into the specific activity limit, the low probability of an event which is limiting due to exceeding this limit, and the ability to restore transient specific activity excursions while the plant remains at, or proceeds to power operation. This allows entry into MODE 4, MODE 3, and MODE 2 prior to performing the surveillance. This allows the surveillance to be performed in any of those MODES, prior to entering MODE 1, similar to the current surveillance SR 3.4.16.2 for DEI.

3.1.9 SR 3.4.16.3 Deletion

The current SR 3.4.16.3 which required the determination of E Bar is deleted. TS 3.4.16 LCO on RCS specific activity supports the dose analyses for DBAs, in which the whole body dose is primarily dependent on the noble gas concentration, not the non-gaseous activity currently captured in the E Bar definition. With the elimination of the limit for RCS gross specific activity and the addition of the new LCO limit for noble gas specific activity, this SR to determine E Bar is no longer required.

3.2 Precedent

The technical specifications developed for the Westinghouse AP600 and AP1000 advanced reactor designs incorporate an LCO for RCS DEX activity in place of the LCO on non-iodine gross specific activity based on E Bar. This approach was approved by the NRC staff for the AP600 in NUREG–1512, ''Final Safety Evaluation Report Related to the Certification of the AP600 Standard Design, Docket No. 52–003,'' dated August 1998 and for the AP1000 in the NRC letter to Westinghouse Electric Company dated September 13, 2004. In addition, the curve describing the maximum allowable iodine concentration during the 48-hour period of elevated activity as a function of power level, was not included in the TS approved for the AP600 and API000 advanced reactor designs.

4.0 State Consultation

In accordance with the Commission's regulations, the [_____] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment[s] change[s] a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 or surveillance requirements. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration and there has been no public comment on such finding published [DATE] ([–] FR [–]). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: [LICENSEE] requests adoption of an approved change to the Standard Technical Specifications (STS) for pressurized water reactor (PWR) plants (NUREG–1430, NUREG–1431, & NUREG–1432) and plant specific technical specifications (TS), to replace the current limits on primary coolant gross specific activity with limits on primary coolant noble gas activity. The noble gas activity would be based on DOSE EQUIVALENT XE–133 and would take into account only the noble gas activity in the primary coolant. The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–490, Revision 0.

Basis for proposed no-significant-hazards-consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no-significant-hazards-consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Reactor coolant specific activity is not an initiator for any accident previously evaluated. The Completion Time when primary coolant gross activity is not within limit is not an initiator for any accident previously evaluated. The current variable limit on primary coolant iodine concentration is not an initiator to any accident previously evaluated. As a result, the proposed change does not significantly increase the probability of an accident. The proposed change will limit primary coolant noble gases to concentrations consistent with the accident analyses. The proposed change to the Completion Time has no impact on the consequences of any design basis accident since the consequences of an accident during the extended Completion Time are the same as the consequences of an accident during the Completion Time. As a result, the consequences of any accident previously evaluated are not significantly increased.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change in specific activity limits does not alter any physical part of the

plant nor does it affect any plant operating parameter. The change does not create the potential for a new or different kind of accident from any previously calculated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change revises the limits on noble gase radioactivity in the primary coolant. The proposed change is consistent with the assumptions in the safety analyses and will ensure the monitored values protect the initial assumptions in the safety analyses.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland this ____th day of ____, ____.

For The Nuclear Regulatory Commission.

Project Manager,
Plant Licensing Branch [ ], Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–4939 Filed 3–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity for Comment on Model Safety Evaluation for Technical Specification Task Force (TSTF) Traveler To Provide Actions for One Steam Supply to Turbine Driven AFW/EFW Pump Inoperable Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to proposed changes to Actions in the Standard Technical Specifications (STS) relating to One Steam Supply to Turbine Driven Auxiliary Feedwater / Emergency Feedwater (AFW/EFW) Pump Inoperable. This change would establish a Completion Time in the Standard Technical Specifications for the Condition where one steam supply to the turbine driven AFW/EFW pump is inoperable concurrent with an inoperable motor driven AFW/EFW train. The NRC staff has also prepared a model application and model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to adopt the associated changes into plant-specific technical specifications (TS). Licensees of nuclear power reactors to which the models apply can request amendments confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comments on the Model SE, Model Application and Model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires 30 days from the date of this publication. Comments received after this date will be considered if it is practical to do so, but the Commission can only ensure consideration for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

To submit comments or questions on a proposed standard technical specification change via the Internet, use *Form for Sending Comments* on NRC Documents, then select Proposed Changes to Technical Specifications. If you are commenting on a proposed change, please match your comments with the correct proposed change by copying the title of the proposed change from column one to the previous table into the appropriate field of the comment form.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Trent L. Wertz, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, Mail Stop O–12H2, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1568.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the Standard Technical Specifications (STS) (NUREGs 1430—1434) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or proceed with announcing the availability of the change to licensees. Those licensees opting to apply for the subject change to TS are responsible for reviewing the NRC staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant specific information. Each amendment application submitted in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice for comment involves establishing a Completion Time in the Limiting Condition for Operation (LCO) 3.7.5 of the STS for the Condition where one steam supply to the turbine driven AFW/EFW pump is inoperable concurrent with an inoperable motor driven AFW/EFW train. In addition, this notice for comment involves changes to the STS that establish specific Conditions and Action requirements for two motor driven AFW/EFW trains are inoperable at the same time and for when the turbine driven AFW/EFW train is inoperable either (a) due solely to one inoperable steam supply, or (b) due to reasons other than one inoperable steam supply. The changes were proposed by the Technical Specification Task Force (TSTF) in TSTF Traveler TSTF–412, Revision 3, which is accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html* (Accession No. ML070100363). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Applicability

This proposed change to adopt TSTF–412 is applicable to all pressurized water reactors (PWRs) designed by

Babcock and Wilcox (B&W), Westinghouse, and Combustion Engineering (CE). If approved, to efficiently process the incoming license amendment applications, the NRC staff will request that each licensee applying for the changes addressed by TSTF–412, Revision 3, use the CLIIP to submit a License Amendment Request (LAR) that conforms to the enclosed Model Application (Enclosure 1). Any deviations from the Model Application should be explained in the licensee's submittal. Significant deviations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–412. Variations from the approach recommended in this notice may require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the NRC staff's evaluation of comments received as a result of this notice, the NRC staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the SE or proposed NSHC determination as a result of public comments).

If the NRC staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The NRC staff will in turn issue for each application a notice of proposed action, which includes a proposed NSHC determination. A notice of issuance of an amendment of operating license will also be issued to announce the adoption of TSTF–412 for each plant that applies for and receives the requested change.

Dated at Rockville, Maryland, this 8th day of March, 2007.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

Attachment:

The following example of a license amendment request (LAR) was prepared by the NRC staff to facilitate the adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–412, Revision 3 ''Provide Actions for One Steam Supply to Turbine Driven AFW/EFW Pump Inoperable.'' The model provides the expected level of detail and content for a LAR to adopt TSTF–412, Revision 3. Licensees remain responsible for ensuring that their plant-specific LAR fulfills their administrative requirements as well as NRC regulations.

Proposed Model License Amendment Request

U.S. Nuclear Regulatory Commission,
Document Control Desk,
Washington, DC 20555.

Subject: Plant Name
Docket No. 50—Application for Technical Specification Improvement To Revise Actions for One Steam Supply to Turbine Driven Auxiliary Feedwater/Emergency Feedwater Pump Inoperable Using the Consolidated Line Item Improvement Process

Gentlemen:

In accordance with the provisions of 10 CFR 50.90 of Title 10 of the *Code of Federal Regulations* (10 CFR), [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment establishes Conditions, Required Actions, and Completion Times in the Standard Technical Specifications (STS) for the Condition where one steam supply to the turbine driven Auxiliary Feedwater/Emergency Feedwater (AFW/EFW) pump is inoperable concurrent with an inoperable motor driven AFW/EFW train. In addition, this amendment establishes changes to the STS that establish specific Actions when two motor driven AFW/EFW trains are inoperable at the same time and the turbine driven AFW/EFW train is inoperable either (a) due solely to one inoperable steam supply, or (b) due to reasons other than one inoperable steam supply. The change is consistent with NRC-approved Technical Specification Task Force (TSTF) Traveler, TSTF–412, Revision 3, ''Provide Actions for One Steam Supply to Turbine Driven AFW/EFW Pump Inoperable.'' The availability of this technical specification improvement was announced in the **Federal Register** on [DATE OF NOTICE OF AVAILABILITY] as part of the consolidated line item improvement process (CLIIP).

Enclosure 1 provides a description of the proposed change and confirmation of applicability.

Enclosure 2 provides the existing TS pages marked-up to show the proposed change.

Enclosure 3 provides the existing TS Bases pages marked-up to reflect the proposed change.

There are no new regulatory commitments associated with this proposed change.

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. [Note that request may be notarized in lieu of using this oath or affirmation statement].

If you should have any questions regarding this submittal, please contact [ ].

Sincerely,

Name, Title

Enclosures:
1. Description and Assessment
2. Proposed Technical Specification Changes
3. Proposed Technical Specification Bases Changes

cc:
NRR Project Manager
Regional Office
Resident Inspector
State Contact

Enclosure 1 to Model License Amendment Request

Description and Assessment

1.0 Description

The proposed License amendment establishes a new Completion Time in Standard Technical Specifications Section [3.7.5] where one steam supply to the turbine driven AFW/EFW pump is inoperable concurrent with an inoperable motor driven AFW/EFW train. This amendment also establishes specific Conditions and Action requirements when two motor driven AFW/EFW trains are inoperable at the same time and the turbine driven AFW/EFW train is inoperable either (a) due solely to one inoperable steam supply, or (b) due to reasons other than one inoperable steam supply.

The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–412, Revision 3, ''Provide Actions for One Steam Supply to Turbine Driven AFW/EFW Pump Inoperable.'' The availability of this technical specification improvement was announced in the **Federal Register** on [DATE] ([xx FR xxxxx]) as part of the consolidated line item improvement process (CLIIP).

2.0 Assessment

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation published on [DATE] ([xx FR xxxxx]) as part of the CLIIP. This verification included a review of the NRC staff's evaluation as well as the supporting information provided to support TSTF–412, Revision 3. [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] Technical Specifications.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the technical specification changes described in TSTF–412, Revision 3, or the NRC staff's model safety evaluation published in the **Federal Register** on [DATE] ([xx FR xxxxx]).

3.0 Regulatory Analysis

3.1 No Significant Hazards Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination published on [DATE] as part of the CLIIP. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

There are no new regulatory commitments associated with this proposed change.

4.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation published in the **Federal Register** on [DATE] ([xx FR xxxxx]) as part of the CLIIP. [LICENSEE] has concluded that the NRC staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

Enclosure 2 to Model License Amendment Request: Proposed Technical Specification Changes

Enclosure 3 to Model License Amendment Request: Changes To TS Bases Pages

Proposed Model Safety Evaluation

U.S. Nuclear Regulatory Commission Office of Nuclear Reactor Regulation Consolidated Line Item Improvement

Technical Specification Task Force Traveler TSTF–412, Revision 3, Provide Actions for One Steam Supply to the Turbine Driven AFW/EFW Pump Inoperable

1.0 Introduction

By application dated [DATE], [LICENSEE NAME] (the licensee), submitted a request for changes to the [PLANT NAME], Technical Specifications (TS) (Agencywide Documents Access and Management System (ADAMS) Accession No. [MLxxxxxxxxx]). The requested change would establish a Completion Time for the Condition where one steam supply to the turbine driven AFW/EFW pump is inoperable concurrent with an inoperable motor driven AFW/EFW train and establish specific Conditions and Required Actions when two motor driven AFW/EFW trains are inoperable at the same time and the turbine driven AFW/EFW train is inoperable either (a) due solely to one inoperable steam supply, or (b) due to reasons other than one inoperable steam supply.

These changes were described in a Notice of Availability published in the **Federal Register** on [DATE] ([xx FR xxxxx]).

2.0 Regulatory Evaluation

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of Technical Specifications (TS). Pursuant to 10 CFR 50.36(c), TS are required to include items in the following categories: (1) safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. The rule does not specify the particular requirements to be included in a plant's TS.

3.0 Technical Evaluation

TS 3.7.5, Auxiliary Feedwater (AFW)/ Emergency Feedwater (EFW) System

The AFW/EFW System is designed to automatically supply sufficient water to the steam generator(s) to remove decay heat upon the loss of normal feedwater supply with steam generator pressure at the set point of the Main Steam Safety Valves (MSSVs). Subsequently, the AFW/EFW System supplies sufficient water to cool the unit to Residual Heat Removal (RHR) System entry conditions, with steam being released through the Atmospheric Dump Valves (ADVs).

AFW/EFW Systems typically consist of two motor driven AFW/EFW pumps and one steam turbine driven pump configured into three trains. The capacity of the motor driven and steam driven AFW/EFW pumps can vary by plant. Motor driven pumps typically provide 50% or 100% of the required AFW/EFW flow capacity as assumed in the accident analysis. Motor driven AFW/EFW pumps are typically powered from an independent Class 1E power supply and each pump train typically feeds half of the steam generators, although each pump has the capability to be realigned from the control room to feed other steam generators. The steam turbine driven AFW/EFW pump provides either 100% or 200% of the required capacity to all steam generators. The steam turbine driven pump receives steam from two main steam lines upstream of the main steam isolation valves. Each of the steam feed lines will supply 100% of the requirements of the turbine driven AFW/EFW pump.

LCO 3.7.5, Condition A (as Proposed)

Condition A is modified to refer to the inoperability of a turbine driven AFW/EFW train due to an inoperable steam supply, instead of referring to the inoperability of a turbine driven AFW/EFW pump. This change is being proposed in order to make Condition A train oriented instead of component oriented, consistent with the other Conditions that are included in STS 3.7.5. The train oriented approach is consistent with the preferred approach that is generally reflected in the STS, and therefore the proposed change is considered to be acceptable.

STS 3.7.5, Condition C (as Proposed)

A new Condition C with two possible Required Actions (C.1 OR C.2) is proposed for the turbine driven AFW/EFW train being inoperable due to one inoperable steam supply and one motor driven AFW/EFW train being inoperable at the same time. Required Action C.1 requires restoration of the affected steam supply to operable status within either 24 or 48 hours, depending on the capability of the motor driven AFW/EFW train that remains operable. Alternatively, Required Action C.2 requires restoration of the inoperable motor driven AFW/EFW train within either 24 or 48 hours, again depending on the capability of the motor driven AFW/EFW train that remains operable. New Condition C provides two proposed Completion Times that are dependent upon the capacity of the remaining operable motor driven AFW/EFW train to provide AFW/EFW to the steam generators.

A proposed 24 hour Completion Time is applicable to plants that may provide insufficient flow to the steam generators (SGs) in accordance with accident analyses assumptions if a main steam line break (MSLB) or feedwater line break (FLB) were to occur that renders the remaining steam supply to the turbine driven AFW/EFW pump inoperable (a concurrent single failure is not assumed). Insufficient feedwater flow could result, for example, if a single motor driven AFW/EFW train does not have sufficient capacity to satisfy accident analyses assumptions, or if the operable pump is feeding the faulted SG (*i.e.* the SG that is aligned to the operable steam supply for the turbine driven AFW/EFW pump). [This would typically apply to plants with each AFW/EFW motor driven pump having less than 100% of the required flow.] Likewise, a proposed 48 hour Completion Time is applicable when the remaining operable motor driven AFW/EFW train is capable of providing sufficient feedwater flow in accordance with accident analyses assumptions. [This would typically apply to plants with each AFW/EFW motor driven pump having greater than or equal to 100% of the required flow.]

The STS typically allows a 72 hour Completion Time for Conditions where the remaining operable equipment is able to mitigate postulated accidents without assuming a concurrent single active failure. In this particular case, a 24 hour Completion Time is proposed for the situation where the AFW/EFW system would be able to perform its function for most postulated events, and would only be challenged by a MSLB or FLB that renders the remaining operable steam supply to the turbine driven AFW/EFW pump inoperable. Additionally, depending on the capacity of the operable motor driven AFW/EFW pump, it may be able to mitigate MSLB and FLB accidents during those instances when it is not aligned to the faulted SG. The selection of 24 hours for the Completion Time is based on the remaining operable steam supply to the turbine driven AFW/EFW pump and the continued functionality of the turbine driven AFW/EFW train, the remaining operable motor driven AFW/EFW train, and the low likelihood of an event occurring during this 24 hour period that would challenge the capability of the AFW/EFW system to provide feedwater to the SGs. The proposed Completion Time for this particular situation is consistent with what was approved for Waterford 3 by License Amendment 173 for a similar Condition (ADAMS Accession No. ML012840538), and it is commensurate with the STS in that the proposed Completion Time is much less than the 72 hours that is allowed for the situation where accident mitigation capability is maintained. Therefore, the NRC staff agrees that the

proposed 24 hour Completion Time is acceptable for this particular situation.

A 48 hour Completion Time is proposed for the situation where the remaining operable motor driven AFW/EFW train is able to mitigate postulated accidents in accordance with accident analyses assumptions without assuming a concurrent single active failure. The selection of 48 hours is based on the continued capability of the AFW/EFW system to perform its function, while at the same time recognizing that this Condition represents a higher level of degradation than one inoperable AFW/EFW train which is currently allowed for up to 72 hours by STS 3.7.5. The proposed 48 hour Completion Time represents an appropriate balance between the more severe 24 hour situation discussed in the previous paragraph and the less severe Condition that is afforded a 72 hour Completion Time by the current STS. Therefore, the NRC staff agrees that the proposed 48 hour Completion Time is acceptable for this particular situation.

STS 3.7.5, Condition D (as Proposed)

The current Condition C is renamed as Condition D. This Condition has been modified to incorporate changes brought on by the addition of new Condition C. The first Condition has been modified and now applies to the situation where the Required Action and associated Completion Time of Condition A, B, or C are not met. This section of Condition D is modified to also apply to the new Condition C when the Completion Time that is specified for new Condition C is not met. The NRC staff considers this to be appropriate and consistent with existing STS 3.7.5 requirements to place the plant in a mode where the Condition does not apply when the Required Actions are not met.

The second Condition following the first ''OR'' in Condition D is modified from ''Two AFW/EFW trains inoperable in MODE 1, 2, or 3'' to ''Two AFW/EFW trains inoperable in MODE 1, 2, or 3 for reasons other than Condition C.'' This change is necessary to recognize the situation specified by Condition C (as proposed) where one motor driven AFW/EFW train is allowed to be inoperable at the same time that the turbine driven AFW/EFW train is inoperable due to an inoperable steam supply to the pump turbine. Therefore, the NRC staff considers the proposed change to be acceptable.

The Required Actions associated with this Condition were renamed from C.1 AND C.2 to D.1 AND D.2 but not otherwise changed. Required Action D.1 requires the plant to be in Mode 3 in 6 hours, and Required Action D.2 requires the plant to be in Mode 4 in 18 hours. This change is purely editorial as no other changes are involved. Therefore, this proposed change is acceptable.

STS 3.7.5, Condition E (as Proposed)

Because current Condition C is renamed as Condition D, current Condition D is renamed as Condition E. This change is purely editorial as no other changes are involved. Therefore, the proposed change is acceptable.

STS 3.7.5, Condition F (as Proposed)

Because current Condition D is renamed as Condition E, current Condition E is renamed as Condition F. This change is purely editorial as no other changes are involved. Therefore, the proposed change is acceptable.

STS 3.7.5 Bases (as Proposed)

Though changes to the STS Bases do not require NRC approval per se, changes to the STS Bases were reviewed to assess their consistency with the proposed changes to STS 3.7.5. The proposed changes to the STS Bases appeared to be consistent with the proposed changes to STS 3.7.5.

4.0 State Consultation

In accordance with the Commission's regulations, the [STATE] State official was notified of the proposed issuance of the amendments. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the NRC staff].

5.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and changes surveillance requirements. The NRC staff has determined that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration, and there has been [(1) no public comment on such finding (2) the following comments with subsequent disposition by the NRC staff ([xx FR xxxxx, DATE]). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

The proposed changes are consistent with NRC practices and policies as generally reflected in the STS and as reflected by applicable precedents that have been approved. Therefore, the NRC staff has determined that the proposed changes to STS 3.7.5 should be approved.

Model No Significant Hazards Consideration Determination

Description of amendment request: The requested change, applicable to all pressurized water reactors (PWRs) designed by Babcock and Wilcox (B&W), Westinghouse, and Combustion Engineering (CE), would provide changes to the Actions in the Standard Technical Specifications (STS) relating to One Steam Supply to Turbine Driven Auxiliary Feedwater/Emergency Feedwater (AFW/EFW) Pump Inoperable. The proposed change is described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–412, Revision 3, and was described in the Notice of Availability published in the **Federal Register** on [DATE] ([xx FR xxxxx]).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The Auxiliary/Emergency Feedwater (AFW/EFW) System is not an initiator of any design basis accident or event, and therefore the proposed changes do not increase the probability of any accident previously evaluated. The proposed changes to address the condition of one or two motor driven AFW/EFW trains inoperable and the turbine driven AFW/EFW train inoperable due to one steam supply inoperable do not change the response of the plant to any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems, and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not result in a change in the manner in which the AFW/EFW System provides plant protection. The AFW/EFW System will continue to supply water to the steam generators to remove decay heat and other residual heat by delivering at least the minimum required flow rate to the steam generators. There are no design changes associated with the proposed changes. The changes to the Conditions and Required Actions do not change any existing accident scenarios, nor create any new or different accident scenarios.

The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the proposed change involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of no significant hazards consideration is justified.

Dated at Rockville, Maryland, this XXth day of XX, 2007.

For the Nuclear Regulatory Commission.

Project Manager,

Plant Licensing Branch [ ], Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–4940 Filed 3–16–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ad–11, SEC File No. 270–261, OMB Control No. 3235–0274.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• **Rule 17Ad–11: Reports Regarding Aged Record Differences, Buy-ins, and Failure To Post Certificate Detail To Master Securityholder Files**

Rule 17Ad–11 (17 CFR 240.17Ad–11) requires all registered transfer agents to report to issuers and the appropriate regulatory agency in the event that aged record differences exceed certain dollar value thresholds. An aged record difference occurs when an issuer's records do not agree with those of securityowners as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. In addition, the rule requires transfer agents to report to the appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within 5 business days of the time required by Rule 17Ad–10 (17 CFR 240.17 Ad–10). Also, transfer agents must maintain a copy of each report prepared under Rule 17Ad–11 for a period of three years following the date of the report. This recordkeeping requirement assists the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

Because the information required by Rule 17Ad–11 is already available to transfer agents, any collection burden for small transfer agents is minimal. The staff estimates that the average number of hours necessary to comply with Rule 17Ad–11 is one hour annually. Based upon past submissions, the total burden is 50 hours annually for the transfer agent industry.

The retention period for the recordkeeping requirement under Rule 17Ad–11 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–11 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 7, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4893 Filed 3–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submissions for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form 10–QSB, OMB Control No. 3235–0416, SEC File No. 270–369.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 10–QSB (17 CFR 249.308b) is a quarterly report form that is available to ''small business issuers'' as defined by regulations under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*), and is used by such issuers to satisfy their quarterly reporting obligations pursuant to Section 13 and Section 15(d) of the Exchange Act (15 U.S.C. 78m and 78o(d)). Form 10–QSB provides a comprehensive overview of the small business issuer's business, although its requirements call for slightly less detailed information than required by Form 10–Q (17 CFR 249.308a). The information provided is mandatory and all information is made available to the public upon request. Form 10–QSB takes approximately 182 hours per response to prepare and is filed by 4,066 respondents three times a year for a total of 12,198 responses. We estimate that 75% of the 182 hours per response (136.5 hours) is prepared by the company for a total annual reporting burden of 1,665,027 hours (136.5 hours per response × 12,198 responses).

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 7, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4896 Filed 3–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request copies available from: Securities and Exchange Commission, Office of Filing and Information Services, Washington, DC 20549.

Extension: Rule 17Ad–10, SEC File No. 270–265, OMB Control No. 3235–0273.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17Ad–10: Prompt posting of certificate detail to master securityholder files, maintenance of accurate securityholder files, communications between co-transfer agents and recordkeeping transfer agents, maintenance of current control book, retention of certificate detail and ''buy-in'' of physical over-issuance

Rule 17Ad–10 (17 CFR 240.17Ad–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), requires a registered transfer agent to create and maintain minimum information on securityholders' ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityholder records to keep certificate detail that has been cancelled from those records for a minimum of six years and to maintain and keep current an accurate record of the number of shares or principle dollar amount of debt securities that the issuer has authorized to be outstanding (a ''control book''). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding overissuance.

There are approximately 760 registered transfer agents. The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 20 hours per year, totalling 15,200 hours industry-wide. The average cost is approximately $50 per hour, with the industry-wide cost estimated at approximately $760,000. However, the information required by Rule 17Ad–10 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

The retention period for the recordkeeping requirements under Rule 17Ad–10 is six years for certificate detail that has been cancelled and to maintain and keep current an accurate record of the number of shares or principle dollar amount of debt securities that the issuer has authorized to be outstanding. The recordkeeping requirement under Rule 17Ad–10 is mandatory to ensure accurate securityholder records and to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Persons should note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or by sending an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 7, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4897 Filed 3–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ad–13, SEC File No. 270–263, OMB Control No. 3235–0275.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17Ad–13 Annual Study and Evaluation of Internal Accounting Control

Rule 17Ad–13(17 CFR 240.17 Ad–13) requires approximately 200 registered transfer agents to obtain an annual report on the adequacy of internal accounting controls. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad–13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad–13.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–13 is one-hundred seventy-five hours annually. The total burden is 35,000 hours annually for transfer agents, based upon past submissions.

The retention period for the recordkeeping requirement under Rule 17Ad–13 is three years following the

date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–13 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 7, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4898 Filed 3–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ad–2(c),(d), and (h), SEC File No. 270–149, OMB Control No. 3235–0130.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• **Rule 17Ad–2(c), (d), and (h)—Transfer Agent Turnaround, Processing and Forwarding Requirements**

Rule 17Ad–2(c), (d), and (h), [17 CFR 240.17Ad–2(c), (d), and (h)], under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), enumerate the requirements with which transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 740 transfer agents, approximately ten notices pursuant to 17Ad-2(c), (d), and (h) are filed annually. The estimated annual cost to respondents is minimal. In view of: (a) The readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion that such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on average, most notices require approximately one-half hour to prepare. The Commission staff estimates that transfer agents spend an average of five hours per year complying with the rule.

The retention period for the recordkeeping requirement under Rule 17Ad–2(c), (d), and (h) is not less than two years following the date the notice is submitted. The recordkeeping requirement under this rule is mandatory to assist the Commission in monitoring transfer agents who fail to meet the minimum performance standards set by the Commission rule. This rule does not involve the collection of confidential information. Please note that a transfer agent is not required to file under the rule unless it does not meet the minimum performance standards for turnaround, processing or forwarding items received for transfer during a month. Persons should note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 7, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4899 Filed 3–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 19, 2007:

An Open Meeting will be held on Wednesday, March 21, 2007 at 10 a.m. in the Auditorium, Room L–002, and a Closed Meeting will be held Wednesday, March 21, 2007 at 2 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), 9(B) and (10) and 17 CFR 200.402(a) (3), (5), (6), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Open Meeting scheduled for Wednesday, March 21, 2007 will be:

The Commission will consider whether to adopt a new rule that will enable a foreign private issuer meeting specified conditions to terminate its Securities Exchange Act of 1934 registration and reporting obligations under Section 12(g) regarding a class of equity securities and its Section 15(d) reporting obligations regarding a class of equity or debt securities. The Commission will also consider whether to adopt a rule amendment that will apply the exemption from Exchange Act registration under Rule 12g3–2(b) to a class of equity securities immediately upon the effective date of the issuer's termination of registration and reporting obligations under the new exit rule.

The subject matter of the Closed Meeting scheduled for Wednesday, March 21, 2007 will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Litigation matters;
An adjudicatory matter; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: March 14, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4984 Filed 3–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55440; File No. SR–NASD–2007–019]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Effective Date of Amendments to NASD's Order Audit Trail System Rules

March 9, 2007.

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 March 1, 2007, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing the proposed rule change to establish February 4, 2008, as the effective date of the amendments to NASD Rules 6951, 6952, and 6955 that the Commission approved on October 10, 2006.[4] The amendments expand the Order Audit Trail System (''OATS'') reporting requirements to over-the-counter (''OTC'') equity securities. No changes are being proposed to NASD rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

NASD is filing the proposed rule change to establish February 4, 2008, as the effective date for the amendments to the OATS rules expanding the OATS reporting requirements to OTC equity securities.

On October 10, 2006, the SEC approved SR–NASD–2005–101, which amended NASD Rules 6951, 6952, and 6955 to expand the OATS reporting requirements to include ''OTC equity securities,'' as defined in NASD Rule 6951.[5] On December 11, 2006, NASD published (1) *Notice to Members 06–70* announcing the Commission's approval of the amendments and (2) a new version of the *OATS Reporting Technical Specifications.* Pursuant to the SEC's approval of SR–NASD–2005–101, the amendments to the OATS rules will go into effect on June 11, 2007, six months following the publication of the revised *OATS Reporting Technical Specifications.*

Since the publication of the *Notice to Members* and the *OATS Reporting Technical Specifications,* many firms have requested that the effective date for the new reporting requirements be delayed to allow firms sufficient time to make necessary systems updates and changes. As a result of these discussions, NASD seeks to delay the implementation of the new requirements until February 4, 2008, to give firms sufficient time to make necessary changes to their systems to enable them to comply with the expanded OATS reporting requirements. NASD also seeks to delay the implementation of these provisions until after firms have completed technological and systems changes required by the complete implementation of Regulation NMS, which is scheduled for October 2007.

NASD has filed the proposed rule change for immediate effectiveness.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with the provisions of the Act noted above because extending the effective date will ensure that firms have sufficient time to make the necessary changes to their systems to be able to comply with the new OATS reporting requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[4] *See* Securities Exchange Act Release No. 54585 (October 10, 2006), 71 FR 61112 (October 17, 2006) (SR–NASD–2005–101).

[5] *Id.*

[6] 15 U.S.C. 78o–3(b)(6).

19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2007–019 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–2007–019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of 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 Number SR–NASD–2007–019 and should be submitted on or before April 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4894 Filed 3–16–07; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing notice requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55448; File No. SR–NYSE–2007–20]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete From Section 804.00 of the Exchange's Listed Company Manual Text That Has Been Superseded

March 12, 2007.

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 February 22, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 804.00 of the Exchange's Listed Company Manual (''Manual'') to delete the rule text which applied prior to the implementation of the revised text of Section 804.00 on April 24, 2006. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 804.00 of the Exchange's Manual to delete the rule text which applied prior to the implementation of the revised text of Section 804.00 on April 24, 2006. On July 14, 2005, the Commission adopted amendments to Rule 12d2–2 under the Act.[3] Rule 12d2–2, as amended, required, among other things, all national securities exchanges, including the Exchange, to amend their delisting rules to conform with certain requirements set forth in amended Rule 12d2–2. The Exchange amended Section 804.00 in light of these requirements and its new delisting procedures superseded the old procedures on April 24, 2006. As such, the old procedures have no further application and, to avoid confusion, the Exchange proposes to delete them from Section 804.00 in their entirety.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[4] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.12d2–2. *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[4] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[7] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal should provide clarity to the Exchange's Manual by deleting obsolete rule text. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–20 and should be submitted on or before April 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4895 Filed 3–16–07; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at the Carroll County Regional Airport, Westminster, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of approximately thirteen (13) acres of land acquired with local funds at the Carroll County Regional Airport, Westminster, Maryland to the National Instrument, LLC. The airport will receive $1,168,298.80 in addition to protective easements and other considerations that will complement anticipated airport development. There are no impacts to the airport and the land is not needed for airport development as shown on the Airport Layout Plan.

DATES: Comments must be received on or before April 18, 2007.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Renny Manuel, Executive Director Winchester Regional Airport Authority, at the following address: Mr. Joseph R. Varrone, Administrator, Office of Performance Auditing and Special Projects, Carroll County Government, 225 North Center Street, Westminster, Maryland 21157–5194.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, e-mail *Terry.Page@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia on March 5, 2007.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 07–1301 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request for a Land Exchange at the Double Eagle II Airport, Albuquerque, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request for the Double Eagle II Airport to exchange land with the State of New Mexico.

SUMMARY: The FAA proposes to rule and invites public comment on the exchange of property at the Double Eagle II Airport, Albuquerque, New Mexico. The city of Albuquerque as an airport owner has requested to exchange a tract of land that is currently on the north property line of the airport for a tract of land at the south center part of the airport. The land on the north to be exchanged requires release from any and all provisions of all applicable Grant Agreements and Grant Assurances, and to change forever, the lands exchanged from aeronautical to non-aernautical use under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21). The state of New Mexico will exchange a section of land of equal land size immediately south of the intersection of the two established runways.

DATES: Comments must be received on or before April 18, 2007.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Louisiana/New Mexico Airports Development Office, ASW–640, Fort Worth, Texas 76193–0640.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jim Hinde, City of Albuquerque, Aviation Department, PO Box 9948, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Saupp, Program Manager, Federal Aviation Administration, LA/NM Airports Development Office, ASW–640e, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0640.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to exchange of this property in that: the release of the northern property from the Grant Assurances; incorporation of the southern property into dedicated airport property, all under the provisions of AIR 21.

The following is a brief overview of the request:

The city of Albuquerque as owner of the Double Eagle II Airport has requested of the Federal Aviation Administration to exchange approximately 52 acres for land of the same size adjacent to the airport. The northern tract is 375 feet wide by 6,000 feet long of the existing Double Eagle II Airport, for a parcel 2,120 feet wide and 1,062 deep located in the south central part but off the airport. This southern part is located between Runways 4/22 and 17/35 and adjacent to the parallel taxiways to both runways. This exchange shall protect the line of sight for aircraft operating on these separate runways. The lands of the northern tract will be changed from aeronautical to non-aeronautical use and the lands released from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. Upon this exchange the Assurances of the Grant Agreements shall hereafter apply to the south tract of land.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of Mr. Jim Hinder, Albuquerque Sunport Offices, Terminal Building, Albuquerque, NM.

Dated: Issued in Forth Worth, Texas on March 12, 2007.

D. Cameron Bryan,

Acting Manager, Airports, Division.

[FR Doc. 07–1299 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Meeting, Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS).

SUMMARY: The FAA is issuing this notice to advise the public of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS).

DATES: The meeting will be held April 11, 2007, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at American Eurocopter, 2701 Forum Drive, Grand Prairie, Texas 75052.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Adivisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 212 meeting. The agenda will include:

- *April 11:*
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Agenda Overview).
- The Draft Protection Scenario Document will be Vetted by full Committee.
- The full committee will begin work on the Minimum Operations Standards (MOPS) for HTAWS.
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. Pre-Registration for this meeting is not required for attendance but is desired and can be done through the RTCA secretariat. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 8, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–1302 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In February 2007, there were three applications approved. This notice also includes information on one application, approved in January 2007, inadvertently left off the January 2007 notice. Additionally, eight approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Syracuse, New York.

Application Number: 07–07–C–00–SYR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $96,732,010.

Earliest Charge Effective Date: April 1, 2007.

Estimated Charge Expiration Date: August 1, 2026.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Syracuse-Hancock International Airport.

Brief Description of Project Approved for Collection and Use: Prepare PFC application.

Brief Description of Project Approved for Collection: Passenger terminal security and access improvements.

Decision Date: January 29, 2007.

FOR FURTHER INFORMATION CONTACT: Robert Levine, New York Airports District Office, (516) 227–3807.

Public Agency: County of Del Norte, Crescent City, California.

Application Number: 07–03–C–00–CEC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $253,123.

Earliest Charge Effective Date: April 1, 2007.

Estimated Charge Expiration Date: September 1, 2012.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jack McNamara Field.

Brief Description of Project Approved for Collection and Use:

Pavement management system.
Security enhancements.
Aircraft rescue and firefighting vehicle.
Aircraft rescue and firefighting building (design).
Obstruction removal on runways 17 and 29.
Airport master plan.
Environmental inventory for master plan.
Installation of security fencing—phase III.
Rehabilitation of general aviation taxilanes.
Environmental assessment for new terminal building.
Aircraft rescue and firefighting building (construction).
Runway safety area study.
PF program.

Brief Description of Disapproved Project: Install 50,000-gallon water tank.

Determination: This project does not meet the requirements of § 158.15(b).

Decision Date: February 16, 2007.

FOR FURTHER INFORMATION CONTACT: TJ Chen, San Francisco Airports District Office, (650) 876–2778, extension 625.

Public Agency: Western Reserve Port Authority, Youngstown, Ohio.

Application Number: 07–05–C–00–YNG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $441,000.

Earliest Charge Effective Date: April 1, 2007.

Estimated Charge Expiration Date: September 1, 2012.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Youngstown-Warren Regional Airport.

Brief Description of Projects Approved for Collection and Use:

PFC program administration.
Hold room seating.
New restrooms in hold room area.

Brief Description of Project Approved for Collection: Terminal curb and sidewalk replacement and roof repair.

Decision Date: February 22, 2007.

FOR FURTHER INFORMATION CONTACT: Jason Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: Asheville Regional Airport Authority, Asheville, North Carolina.

Application Number: 07–03–C–00–AVL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $478,051.

Earliest Charge Effective Date: April 1, 2007.

Estimated Charge Expiration Date: September 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Asheville Regional Airport.

Brief Description of Project Approved for Collection and Use: Security enhancements.

Decision Date: February 23, 2007.

FOR FURTHER INFORMATION CONTACT: John Marshall, Atlanta Airports District Office, (404) 305–7153.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
99–01–C–03–FAI, Fairbanks, AK	2/06/07	$5,460,000	$5,196,252	10/01/06	10/01/06
04–07–C–02–JNU, Juneau, AK	2/06/07	5,143,039	5,226,106	09/01/09	09/01/08
99–05–C–03–MFR, Medford, OR	2/14/07	1,672,962	1,621,333	02/01/03	04/01/03

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
05–09–C–01–COS, Colorado Springs, CO	2/15/07	5,847,000	6,255,000	09/01/07	01/01/08
05–05–C–01–SUN, Hailey, ID	2/15/07	711,054	746,213	04/01/09	08/01/07
03–04–C–02–EAT, Wenatchee, WA	2/15/07	142,025	132,532	06/01/04	06/01/04
00–02–C–02–CEC, Crescent City, CA	2/16/07	447,048	156,237	03/01/11	04/01/07
*00–08–C–01–MCO, Orlando, FL	2/27/07	253,632,770	253,632,770	07/01/14	09/01/10

The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Orlando International Airport, this change is effective on April 1, 2007.

Issued in Washington, DC, on March 9, 2007.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 07–1300 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–27605]

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on January 9, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 18, 2007.

ADDRESSES: You may send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–27605.

FOR FURTHER INFORMATION CONTACT: Guan Xu, 202–366–5892, Office of Safety Design, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Developing and Recording Costs for Railroad Adjustments.

OMB Control #: 2125–0521.

Background: Under 23 U.S.C. 130, the FHWA reimburses the State highway agencies when they have paid for the cost of projects that (1) eliminate hazards at railroad/highway crossings, or (2) adjust railroad facilities to accommodate the construction of highway projects. The FHWA requires the railroad companies to document their costs incurred for adjusting their facilities. The railroad companies must have a system for recording labor, materials, supplies, and equipment costs incurred when undertaking the necessary railroad work. This record of costs forms the basis for payment by the State highway agency to the railroad company, and in turn FHWA reimburses the State for its payment to the railroad company.

Respondents: Approximately 135 railroad companies.

Frequency: Nearly 135 railroad companies are involved in an average of 10 railroad/highway projects per year, so the total frequency is 1,350 railroad adjustments.

Estimated Average Burden per Response: The average number of hours required to calculate the railroad adjustment costs and maintain the required records per adjustment is 12 hours.

Estimated Total Annual Burden Hours: The FHWA estimates that the total annual burden imposed on the public by this collection is 16,200 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 13, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–4926 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–27588]

RIN 2127–AF54

Federal Motor Vehicle Safety Standards; Side Impact Protection; Review: FMVSS 214 TTI(d) Improvements and Side Air Bags; Evaluation Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating its existing Safety Standard 214, Side Impact Protection. The report's title is: An Evaluation of Side Impact Protection—FMVSS 214 TTI(d) Improvements and Side Air Bags.

DATES: Comments must be received no later than July 17, 2007.

ADDRESSES:

Report: The report is available for viewing on line in PDF format at the Docket Management System (DMS) Web page of the Department of Transportation, *http://dms.dot.gov.* Click on ''Simple Search''; type in the five-digit Docket number shown at the beginning of this Notice (27588) and click on ''Search''; that brings up a list of every item in the docket, starting with a copy of this **Federal Register** notice (item NHTSA–2007–27588–1) and a

copy of the report in PDF format (item NHTSA–2007–27588–2).

Comments: You may submit comments [identified by DOT DMS Docket Number NHTSA–2007–27588] 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.

You may call Docket Management at 202–366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Kahane, Chief, Evaluation Division, NPO–131, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. *Telephone:* 202–366–2560. *Fax:* 202–366–2559. *E-mail: chuck.kahane@dot.gov.*

SUPPLEMENTARY INFORMATION: Safety Standard 214 (49 CFR 571.214) was amended to assure occupant protection in a 33.5 mph crash test and phased-in to new passenger cars during model years 1994–1997 (55 FR 45752). A Thoracic Trauma Index, TTI(d) is measured on Side Impact Dummies seated adjacent to the impact point. Manufacturers upgraded side structures and affixed padding in cars to improve TTI(d). Later, they installed two types of side air bags—torso bags and head air bags—for additional occupant protection in cars and LTVs. Statistical analyses of 1993–2005 crash data from the Fatality Analysis Reporting System (FARS) and the General Estimates System (GES) estimate fatality reductions for these technologies.

- Average TTI(d) improved in 2-door cars from 114 in 1981–1985 to 44 in 214-certified cars with side air bags, and in 4-door cars from 85 to 48.
- TTI(d) improvements without side air bags reduced fatality risk for nearside occupants in multivehicle crashes by an estimated 33 percent in 2-door cars and 17 percent in 4-door cars.
- Torso plus head air bags reduce fatality risk for nearside occupants by an estimated 24 percent; torso bags alone, by 12 percent.

How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2007–27588) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management, submit them electronically, or fax them. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at *http://dms.dot.gov* and click on ''Help'' to obtain instructions. The fax number is 1–202–493–2251.

We also request, but do not require you to send a copy to Charles Kahane, Evaluation Division, NPO–131, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, fax to 202–366–2559 or e-mail to *chuck.kahane@dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How can I read the comments submitted by other people?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

B. On that page, click on ''Simple Search.''

C. On the next page ((*http://dms.dot.gov/search/searchFormSimple.cfm/*) type in the five-digit Docket number shown at the beginning of this Notice (27588). Click on ''Search.''

D. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Joseph S. Carra,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. E7–4890 Filed 3–16–07; 8:45 am]

BILLING CODE 4910–59–P

Corrections

Federal Register

Vol. 71, No. 52

Monday, March 19, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Adoption of Alternative Arrangements Under the National Environmental Policy Act for New Orleans Hurricane and Storm Damage Reduction System

Correction

In notice document E7–4515 beginning on page 11337 in the issue of Tuesday, March 13, 2007, make the following correction:

On page 11338, in the first column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the last two lines, the e–mail address ''*mvnenvironmental pd@mvn02.usace.army.mil*'' should read ''*mvnenvironmental @mvn02.usace.army.mil*''.

[FR Doc. Z7–4515 Filed 3–16–07; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55371; File No. SR–Phlx–2007–06]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Port Fees as Modified by Amendment No. 1

Correction

In notice document E7–3916 beginning on page 10287 in the issue of Wednesday, March 7, 2007, make the following correction:

On page 10288, in the second column, in the first paragraph, in the last two lines, ''March 27, 2007'' should read ''March 28, 2007''.

[FR Doc. Z7–3916 Filed 3–16–07; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Certain Companies Quoted on the Pink Sheets: Advanced Powerline Technologies Inc.; America Asia Petroleum Corp.; Amerossi Int'l Group, Inc.; Apparel Manufacturing Associates, Inc.; Asgard Holdings Inc.; Biogenerics Ltd.; China Gold Corp.; CTR Investments & Consulting, Inc.; DC Brands International, Inc.; Equal Trading, Inc.; Equitable Mining Corp.; Espion International, Inc.; Goldmark Industries, Inc.; GroFeed Inc.; Healtheuniverse, Inc.; Interlink Global Corp.; Investigative Services Agencies, Inc.; iPackets International, Inc.; Koko Petroleum Inc.; Leatt Corporation; LOM Logistics, Inc.; Modern Energy Corp.; National Healthcare Logistics, Inc.; Presidents Financial Corp.; Red Truck Entertainment Inc.; Relay Capital Corp.; Rodedawg International Industries, Inc.; Rouchon Industries, Inc.; Software Effective Solutions Corp.; Solucorp Industries Ltd.; Sports-stuff.com Inc.; UBA Technology, Inc.; Wataire Industries Inc.; WayPoint Biomedical Holdings, Inc.; Wineco Productions Inc.; Order of Suspension of Trading

Correction

In notice document 07–1163 beginning on page 11409 in the issue of Tuesday, March 13, 2007, make the following correction:

On page 11409, in the third column, the subject heading should read as set forth above.

[FR Doc. C7–1163 Filed 3–16–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
March 19, 2007

Part II

Securities and Exchange Commission

17 CFR Part 240

Amendments to Financial Responsibility Rules for Broker-Dealers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–55431; File No. S7–08–07]

RIN 3235–AJ85

Amendments to Financial Responsibility Rules for Broker-Dealers

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment amendments to its net capital, customer protection, books and records, and notification rules for broker-dealers under the Securities Exchange Act of 1934 (''Exchange Act''). The proposed amendments would address several emerging areas of concern regarding the financial requirements for broker-dealers. They also would update the financial responsibility rules and make certain technical amendments.

DATES: Comments should be received on or before May 18, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–08–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–08–07. This file number should be included on the subject line if e-mail is used. To help us 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/proposed*). Comments will also be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. 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.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Assistant Director, at (202) 551–5521; Randall Roy, Branch Chief, at (202) 551–5522; or Bonnie Gauch, Attorney, (202) 551–5524; Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Background

We are proposing for comment amendments to the broker-dealer net capital rule (Rule 15c3–1),[1] customer protection rule (Rule 15c3–3),[2] books and records rules (Rules 17a–3 and 17a–4),[3] and notification rule (Rule 17a–11).[4]

II. Proposed Amendments

A. Amendments to the Customer Protection Rule

The Commission adopted the customer protection rule (Rule 15c3–3) in 1972 in response to a congressional directive to strengthen the financial responsibility requirements for broker-dealers that carry customer assets.[5] The rule requires a broker-dealer to take certain steps to protect the credit balances and securities it holds for customers. Under the rule, a broker-dealer must, in essence, segregate customer funds and fully paid and excess margin securities held by the firm for the accounts of customers.[6] The intent of the rule is to require a broker-dealer to hold customer assets in a manner that enables their prompt return in the event of an insolvency, which, in turn, increases the ability of the firm to wind down in an orderly self-liquidation and, thereby avoid the need for a proceeding under the Securities Investor Protection Act of 1970 (''SIPA'').[7]

The required amount of customer funds to be segregated is calculated pursuant to a formula set forth in Exhibit A to Rule 15c3–3.[8] Under the formula, the broker-dealer adds up various credit and debit line items. The credit items include cash balances in customer accounts and funds obtained through the use of customer securities. The debit items include money owed by customers (*e.g.,* from margin lending), securities borrowed by the broker-dealer to effectuate customer short sales, and required margin posted to certain clearing agencies as a consequence of customer securities transactions. If, under the formula, customer credit items exceed customer debit items, the broker-dealer must maintain cash or qualified securities in that net amount in a ''Special Reserve Bank Account for the Exclusive Benefit of Customers.'' This account must be segregated from any other bank account of the broker-dealer. Generally, a broker-dealer with a deposit requirement of $1 million or more computes its reserve requirement on a weekly basis as of the close of the last business day of the week (usually Friday).[9] The weekly calculation determines the required minimum balance the broker-dealer must maintain in the reserve account.

As noted, Rule 15c3–3 also requires a broker-dealer to maintain physical possession or control of all fully paid and excess margin securities carried for customers.[10] This means the broker-dealer cannot lend or hypothecate these securities and must hold them itself or, as is more common, in a satisfactory control location. Under the rule, satisfactory control locations include regulated securities clearing agencies, U.S. banks, and, with the approval of the Commission, certain foreign financial institutions.[11] In order to meet the possession or control requirement, a broker-dealer must determine on a daily basis the amount of customer fully paid and excess margin securities (by issuer and class) it holds for customers.[12] It then compares that amount with the amount of securities it holds free of lien in its own possession or at one of the satisfactory control locations. If a shortfall exists, the firm must take certain actions under the rule.[13] The actions include: removing liens on securities collateralizing a bank loan; recalling securities loaned to a bank or clearing corporation; buying-in securities that have been failed to receive over thirty days; or buying-in securities receivable as a result of dividends, stock splits or similar

[1] 17 CFR 240.15c3–1.

[2] 17 CFR 240.15c3–3.

[3] 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[4] 17 CFR 240.17a–11.

[5] *See* Exchange Act Release No. 9856 (November 10, 1972), 1972 SEC LEXIS 189.

[6] Subparagraph (a)(3) of Rule 15c3–3 defines ''fully paid securities'' as securities carried in any type of account for which the customer has made a full payment. Subparagraph (a)(5) defines ''excess margin securities'' as securities having a market value in excess of 140% of the amount the customer owes the broker-dealer and which the broker-dealer has designated as not constituting margin securities.

[7] 15 U.S.C. 78aaa *et seq.*

[8] 17 CFR 240.15c3–3a.

[9] 17 CFR 240.15c3–3(e)(3).

[10] 17 CFR 240.15c3–3(b)(1).

[11] 17 CFR 240.15c3–3(c).

[12] 17 CFR 240.15c3–3(d).

[13] *Id.*

distributions that are outstanding over forty-five days.[14]

1. Proprietary Accounts of Broker-Dealers

We are proposing an amendment to Rule 15c3–3 that would require broker-dealers to treat accounts they carry for domestic and foreign broker-dealers in the same manner generally as ''customer'' accounts for the purposes of the reserve formula of Rule 15c3–3.[15] The amendment is intended to address an inconsistency between the way these proprietary accounts of broker-dealers are protected under Rule 15c3–3 and the SIPA.

Specifically, because broker-dealers are not ''customers'' for purposes of Rule 15c3–3, a broker-dealer that carries the proprietary accounts of other broker-dealers is not required to include credit and debit items associated with those accounts in the customer reserve formula. Conversely, under SIPA, broker-dealers are considered ''customers'' and, consequently, entitled to certain protections. When a broker-dealer is liquidated under SIPA, an estate of customer property is created.[16] Customers of the failed broker-dealer, including customers that are broker-dealers, are entitled to a *pro rata* share of the estate of customer property. Thus, while broker-dealers need not reserve for accounts carried for other broker-dealers under Rule 15c3–3, in a SIPA liquidation, broker-dealer accountholders may share in the fund of customer property. This disparity increases the risk that, in the event a clearing broker is liquidated under SIPA, customer claims will exceed the amount of customer property.

In order to correct the gap between Rule 15c3–3 and SIPA, we are proposing amendments to Rules 15c3–1, 15c3–3 and 15c3–3a that would require carrying broker-dealers to perform a separate reserve computation for proprietary accounts of other domestic and foreign broker-dealers in addition to the reserve computation currently required for ''customer'' accounts, and establish and fund a separate reserve account for the benefit of these domestic and foreign broker-dealers.[17] This added protection also would mitigate potential contagion that might arise in the event of a failure of a broker-dealer with a large number of broker-dealer customers.

The proposed amendments, in many respects, would codify a no-action letter regarding proprietary accounts of introducing brokers (''PAIB Letter'') previously issued by Commission staff.[18] One significant difference is that the amendments would have a broader scope by including proprietary accounts of foreign brokers-dealers and banks acting as broker-dealers. In the PAIB Letter, the staff stated it would not recommend any action to the Commission if an introducing broker-dealer did not take a net capital deduction under Rule 15c3–1 for cash held in a securities account at another broker-dealer, provided the other broker-dealer agreed to (1) perform a reserve computation for broker-dealer accounts, (2) establish a separate special reserve bank account, and (3) maintain cash or qualified securities in the reserve account equal to the computed reserve requirement (''PAIB agreement'').[19] The PAIB Letter, however, did not completely address the disparity between Rule 15c3–3 and SIPA, because the procedures set forth in the letter are voluntary and foreign broker-dealers are not subject to Rule 15c3–1 and, consequently, have no incentive to enter into PAIB agreements. Therefore, carrying firms do not include the accounts of foreign broker-dealers in either the Rule 15c3–3 or PAIB computations. However, these entities may be customers for the purposes of SIPA.

The proposed amendments—like the PAIB Letter—would establish reserve requirements for a carrying broker with respect to proprietary accounts it carries for other broker-dealers. Paragraph (e) of Rule 15c3–3 would be amended to require the carrying broker to perform a reserve computation for a proprietary account of another broker-dealer (referred to as a ''PAB account'') and to establish and maintain a reserve account at a bank for these PAB accounts.[20] A new paragraph (a)(16) would be added to define ''PAB account,'' paragraph (f) would be amended to require the carrying broker-dealer to notify the bank about the status of the PAB reserve account and obtain an agreement and notification from the bank that the PAB reserve account will be maintained for the benefit of the PAB accountholders. In addition, paragraph (g) would be amended to specify when the carrying broker-dealer could make withdrawals from a PAB reserve account. The carrying broker would have to maintain cash or qualified securities in the PAB reserve account in an amount equal to the PAB reserve requirement. Consistent with the no-action relief provided in the PAIB Letter, if the PAB reserve computation results in a deposit

[14] *Id.*

[15] *See* 17 CFR 240.15c3–3(a)(1). This paragraph defines ''customer'' for the purposes of Rule 15c3–3. Broker-dealers, both domestic and foreign, are excluded from the definition and, consequently, are not treated as ''customers'' for the purposes of the rule's reserve and possession and control requirements. Some foreign broker-dealers also operate as banks. These firms are not deemed ''customers'' to the extent that their accounts at the U.S. broker-dealer involve proprietary broker-dealer activities.

[16] In particular, under SIPA, the pool of ''customer property'' is established using assets recovered from the failed broker-dealer. The statute determines the assets that become a part of the pool of customer property. 15 U.S.C. 78*lll*(4). Customer property includes ''cash and securities * * * at any time received, acquired, or held by or for the account of the debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted.'' Therefore, ''customer property'' includes those securities positions that are held for customers and the cash that is owed to customers. After being established, customer property is distributed to customers *pro rata* based on the amounts of their claims (*i.e.*, their net equity). While broker-dealers are not entitled to advances from the SIPC fund to make up for shortfalls in the fund of customer property (*see* 15 U.S.C 78fff–3(a)(5)), they may be ''customers'' as that term is defined in SIPA and, therefore, entitled to a *pro rata* distribution from the fund of customer property.

[17] The amendment would exclude from the broker-dealer reserve computation accounts established by a broker-dealer that fully guarantees the obligations of, or whose accounts are fully guaranteed by, the clearing broker. In these circumstances, the guarantor must take deductions under Rule 15c3–1 for guaranteed obligations of the other firm. In addition, the amendment would exclude delivery-versus-payment and receipt-versus-payment accounts. These types of accounts pose little risk of reducing the estate of customer property in a SIPA liquidation since they only hold assets for short periods of time.

[18] *See* Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Raymond J. Hennessy, Vice President, NYSE, and Thomas Cassella, Vice President, NASD Regulation, Inc. (Nov. 10, 1998).

[19] Under Rule 15c3–1, broker-dealers generally are required to deduct unsecured receivables from their net worth when computing their net capital. Paragraph (c) of the rule contains certain exceptions to this requirement. Among the enumerated exceptions are commissions receivable from another broker-dealer outstanding 30 days or less. This exception is limited to receivables from a clearing broker-dealer related to transactions in accounts introduced by the broker-dealer. Frequently, introducing broker-dealers as well as other broker-dealers will have receivables from another broker-dealer arising from proprietary transactions in an account at the other broker-dealer. There is no exception in Rule 15c3–1 permitting these receivables to be included in a broker-dealer's net capital amount. However, under the terms of the PAIB Letter, a broker-dealer could include them.

[20] Under paragraph (e), broker-dealers are required to perform the customer reserve computation as of the close of business on the last business day of the week or, in some cases, the month. Broker-dealers from time to time may perform a mid-week computation if it would permit them to make a withdrawal. Under the proposed amendments, a broker-dealer would need to compute both the customer and PAB reserve requirements simultaneously before making a withdrawal from either account based on a mid-week computation. Moreover, a withdrawal could not be made from one account if the mid-week computation demonstrated an increased requirement in the other account.

requirement, the proposed amendment would allow the requirement to be offset to the extent there are excess debits in the customer reserve computation of the same date. However, in order to provide greater protection to customers that are not broker-dealers, a deposit requirement resulting from the customer reserve computation would not be able to be offset by excess debits in the PAB reserve computation. This means the carrying broker-dealer could use PAB credits to finance ''customer'' debits, but not the other way around. Thus, ''customers'' (which include retail investors but exclude broker-dealers) would receive greater protection.

Paragraph (b) of Rule 15c3–3 would be amended to provide that a broker-dealer carrying PAB accounts would not be required to maintain physical possession or control of fully paid and excess margin securities carried for PAB accounts, provided it obtains the written permission of the PAB accountholder to use such securities in the ordinary course of its securities business. This provision would be consistent with Rule 15c3–3, which is intended to provide greater protection to customers that are not broker-dealers customers. It also would accommodate industry practice of carrying broker-dealers using the securities of their broker-dealer accountholders, which contributes to the liquidity of the securities markets.

Finally, paragraph (c)(2)(iv)(E) of Rule 15c3–1 would be amended to require a broker-dealer to deduct from net worth when calculating net capital the amount of its cash in a proprietary account at another broker-dealer where the other broker-dealer is not treating the cash in compliance with the proposed requirements described above. This would prevent broker-dealers from including assets in their net capital amounts that may not be readily available. We would not expect broker-dealers to audit or examine their carrying broker-dealers to determine whether the carrying broker-dealer is in compliance with the proposed rules.

We request comment on all aspects of these proposed amendments, including whether the accounts of other non-customers under Rule 15c3–3 (*e.g.*, principal officers of the broker-dealer) should be included in the PAB computation.

2. Banks Where Special Reserve Deposits May Be Held

Broker-dealers must deposit cash or ''qualified securities'' into the customer reserve account maintained at a ''bank'' under Rule 15c3–3(e).[21] Rule 15c3–3(f) further requires the broker-dealer to obtain a written contract from the bank in which the bank agrees not to re-lend or hypothecate securities deposited into the reserve account.[22] Consequently, the securities should be readily available to the broker-dealer. Cash deposits, however, are fungible with other deposits carried by the bank and may be freely used in the course of the bank's commercial lending activities. Therefore, to the extent a broker-dealer deposits cash in a reserve bank account, there is a risk the cash could be lost or inaccessible for a period if the bank experiences financial difficulties. This could adversely impact the broker-dealer and its customers if the balance of the reserve deposit is concentrated at one bank in the form of cash.

This risk may be heightened when the deposit is held at an affiliated bank in that the broker-dealer may not exercise due diligence with the same degree of impartiality when assessing the financial soundness of an affiliate bank as it would with a non-affiliate bank. Moreover, the broker-dealer's customers may not derive any significant protection from the reserve requirement in the event of the parent's insolvency.

To address these risks, we are proposing an amendment to Rule 15c3–3 that would exclude cash deposits at affiliate banks for the purposes of meeting customer or PAB reserve requirements and place limitations on the amount of cash a broker-dealer could maintain in a customer or PAB special reserve bank account at one unaffiliated bank. The exclusion and limitations would not apply to deposits of securities since these assets do not become a part of a bank's working capital. As discussed below, the limitations would prevent a broker-dealer from maintaining a reserve deposit in the form of cash at a single unaffiliated bank that exceeds a percentage of the broker-dealer's or the bank's capital. This is designed to mitigate the risk that an impairment of the reserve deposit at an unaffiliated single bank will have a material negative impact on the broker-dealer's ability to meet its obligations to customers and PAB accountholders.[23]

Under the proposal, a paragraph (e)(5) would be added to Rule 15c3–3. This new paragraph would provide that—in determining whether the broker-dealer maintains the minimum reserve deposits required (customer and PAB)—the broker-dealer would be required to exclude a cash deposit at an affiliated bank. With respect to unaffiliated banks, the broker-dealer would be required to exclude the deposit to the extent that it exceeded (1) 50% of the broker-dealer's excess net capital (based on the most recently filed FOCUS Report),[24] or (2) 10% of the bank's equity capital (based on the bank's most recently filed Call Report or Thrift Financial Report).[25] The goal is to limit cash reserve account deposits to reasonably safe amounts as measured against the capitalization of the broker-dealer and the bank. Excess net capital is the amount that a broker-dealer's net capital exceeds its minimum requirement and, therefore, constitutes a cushion to absorb unexpected losses. We believe limiting a cash deposit in one bank to 50% of excess net capital means the broker-dealer has a reserve to absorb the loss or impairment of the deposit plus an additional amount to absorb other losses. The amount of a bank's equity capital is a measure of its financial solvency. We believe limiting the cash deposit to 10% of the bank's equity capital means the broker-dealer would not commit customer cash to an institution in an amount that is out of proportion to the bank's capital base.

We request comment on all aspects of these proposed amendments, including whether the proposed reserve deposit limitations of 50% of excess net capital or 10% of the bank's equity capital adequately address the risks of concentrating cash deposits at any one bank or whether other thresholds should apply.

[21] The term ''qualified securities'' is defined in paragraph (a)(6) of Rule 15c3–3 to mean a securities issued by the United States or guaranteed by the United States with respect to principal and interest. 17 CFR 240.15c3–3(a)(6). The term ''bank'' is defined in paragraph (a)(7) of Rule 15c3–3.

[22] *See* 17 CFR 240.15c3–3(f).

[23] These amendments are not intended to affect the practice whereby customer free credit balances are swept into a bank deposit account and the customer receives Federal Deposit Insurance Protection.

[24] Under Rule 17a–5 (17 CFR 240.17a–5) broker-dealers must file periodic reports on Form X–17a–5 (Financial and Operational Combined Uniform Single Reports (''FOCUS Reports'')). The FOCUS Report form requires, among other financial information, a balance sheet, income statement, and net capital and customer reserve computations.

[25] Commercial banks insured by the Federal Deposit Insurance Corporation (''FDIC''), savings banks supervised by the FDIC, and non-insurance trust companies supervised by the Office of the Comptroller of the Currency file quarterly Call Reports. Savings Associations and non-insured trust companies supervised by the Office of Thrift Supervision file Thrift Financial Reports (TFRs). These reports include a line item for equity capital. A report for a specific institution can be obtained by accessing the following Web site: *http://www2.fdic.gov/call_tfr_rpts/search.asp.*

3. Expansion of the Definition of Qualified Securities To Include Certain Money Market Funds

As noted above, a broker-dealer is limited to depositing cash or ''qualified securities'' into the bank account it maintains to meet the customer reserve deposit requirements under Rule 15c3–3. Paragraph (a)(6) of Rule 15c3–3 defines ''qualified securities'' as securities issued by the United States or guaranteed by the United States with respect to principal and interest (''US Treasury securities'').[26] These strict limitations on the types of assets that can be used to fund a broker-dealer's customer reserve account are designed to further the purpose of Rule 15c3–3; namely, that customer assets be segregated and held in a manner that makes them readily available to be returned to the customer. For example, paragraph (e)(2) of Rule 15c3–3 makes it unlawful for a broker-dealer to use customer credits (generally, cash balances in securities accounts) for any purpose other than financing customer debits (fully secured margin loans).[27] Under the rule, the amount of excess credits (*i.e.*, credits net of debits) must be held in the customer reserve account and, as noted, the account must be funded with either cash or U.S. Treasury securities.[28]

Federated Investors, Inc. (''Federated'') has filed a petition with the Commission requesting that Rule 15c3–3 be amended to include certain types of money market funds in the definition of qualified securities.[29] We believe expanding the definition to include money market funds that only invest in securities meeting the definition of ''qualified security'' in Rule 15c3–3 would be appropriate. The assets held by such a money market fund would be same as those a broker-dealer can hold directly in its customer reserve account. Consequently, a broker-dealer might choose to deposit qualifying money market fund shares into the customer reserve account based on operational considerations such as avoiding the need to actively manage a portfolio of U.S. Treasury securities. This operational benefit also could decrease burdens on those broker-dealers that would be impacted by our proposed amendments discussed above with respect to customer reserve account cash deposits into affiliate and non-affiliate banks. A broker-dealer that deposits cash into the customer reserve account to avoid the operational aspects of holding and managing U.S. Treasury securities would have the option of depositing a qualifying money market fund to replace the cash deposit.

We believe, however, that there should be safeguards in place designed to ensure that qualifying money market fund shares could be redeemed quickly. A broker-dealer in financial difficulty must be able to liquidate quickly the assets in its customer reserve account so that customer credit balances can be returned without delay. Consequently, in addition to the limitations on holdings discussed above, our proposal to expand the definition of ''qualified securities'' to include money market funds includes the following safeguards. First, the money market fund could not be a company affiliated with the broker-dealer. The broker-dealer may experience financial difficulty caused by liquidity problems at the holding company level that are adversely impacting an affiliated money market fund as well in terms of the fund's ability to promptly redeem shares. Second, our proposal would require the broker-dealer to use a fund that agrees to redeem fund shares in cash on the next business day. There should be no ability of the fund to delay redemption beyond one day or to require a multi-day redemption notification period.

Finally, our proposal would require that the money market fund have an amount of net assets (assets net of liabilities) that is at least 10 times the value of the fund's shares held by the broker-dealer in its customer reserve account. This is designed to prevent a broker-dealer from holding too concentrated a position in a single fund. It also limits a potential redemption request by the broker-dealer to 10% or less of the fund's assets. While a redemption request that equaled 10% of a fund's net assets would be very substantial, we believe it is a reasonable threshold between a request that could be handled promptly and one that could have the potential to cause the fund some degree of difficulty in meeting the request within one business day. We seek comment on this threshold, particularly with respect to whether it should be smaller (*e.g.*, 5% or 2%) or higher (*e.g.*, 15% or 25%).

For the foregoing reasons, we propose amending the definition of ''qualified security'' in paragraph (a)(6) of Rule 15c3–3 to include an unaffiliated money market fund that: (1) Is described in Rule 2a–7 of the Investment Company Act of 1940; (2) invests solely in securities issued by the United States or guaranteed by the United States as to interest and principal; (3) agrees to redeem fund shares in cash no later than the business day following a redemption request by a shareholder; and (4) has an amount of net assets equal to at least 10 times the value of the shares deposited by the broker-dealer in its customer reserve account.

We solicit comment on all aspects of this proposal, including whether these types of money market funds are appropriate for the customer reserve account in terms of liquidity and safety and whether the 10% net asset limitation would be an adequate safeguard in terms of ensuring a broker-dealer could quickly redeem its shares.

4. Allocation of Customers' Fully Paid and Excess Margin Securities to Short Positions

Paragraph (d) of Rule 15c3–3 sets forth steps a broker-dealer must take to retrieve securities from non-control locations if there is a shortfall in the fully paid or excess margin securities it is required to hold. The rule does not require the broker-dealer to act when a short position on the broker-dealer's stock record allocates to a customer long position; for example, if the broker-dealer sells short a security to its customer. In such a circumstance, the broker-dealer would not be required to have possession or control of the security its customer has paid for in full. Instead, the broker-dealer would put the mark-to-market value of the security as a credit item in the reserve formula. The cash paid by the customer to purchase the security could be used by the broker-dealer to make any increased deposit requirement caused by the credit item. If the increase is less than the cash paid, the broker-dealer could use the excess funds in its own business operations. Moreover, if the value of the security decreases, the broker-dealer could withdraw funds out of the reserve account and use them as well. In effect, this permits the broker-dealer to monetize the customer's security. This is contrary to the customer protection goals of Rule 15c3–3, which seeks to ensure that broker-dealers do not use customer assets for proprietary purposes.

Accordingly, we are proposing to add a new paragraph (d)(4) to Rule 15c3–3, which would add an additional action with respect to retrieving securities from non-control positions when the broker-dealer needs to obtain possession or control over a specific issue and class of

[26] 17 CFR 240.15c3–3(a)(6).

[27] 17 CFR 240.15c3–3(e)(2).

[28] *Id.*

[29] *See* Public Petition for Rulemaking No. 4–478 (April 3, 2003), as amended (April 4, 2005), available at *http://www.sec.gov/rules/petitions/petn4–478.htm.*

securities.[30] Specifically, under the proposal, the broker-dealer would be required to take prompt steps to obtain physical possession or control over securities of the same issue and class as those included on the broker-dealer's books as a proprietary short position or as a short position for another person. By requiring the broker-dealer to obtain physical possession or control over the security, it would no longer be able to monetize the value of the security and use the cash for proprietary activities.

Under the proposal, the action would not be required until the short position had aged more than 10 business days (or more than 30 calendar days if the broker or dealer is a market maker in the securities).[31] Allowing broker-dealers 10 business days before they must take action is consistent with paragraph (m) of Rule 15c3–3, which similarly allows a broker-dealer up to 10 business days after settlement date to purchase securities that a customer has sold through the broker-dealer but failed to deliver. As with the requirement in paragraph (m), the proposal's objective is to require a broker-dealer to close an open transaction but within a timeframe that permits a degree of flexibility. The longer 30 calendar day period for securities in which the broker-dealer makes a market is intended to accommodate the short-selling that is integral to market-making activities.

We request comment on all aspects of this proposed amendment, including whether the proposed time periods should be longer or shorter.

5. Treatment of Free Credit Balances and Importation of Rule 15c3–2 Requirements Into Rule 15c3–3

i. Treatment of Free Credit Balances

Free credit balances are funds payable by a broker-dealer to its customers on demand.[32] They may result from cash deposited by the customer to purchase securities, proceeds from the sale of securities or other assets held in the customer's account, or earnings from dividends and interest on securities and other assets held in the customer's account. Broker-dealers may, among other things, pay interest to customers on their free credit balances, or offer to transfer (sweep) them into a specific money market fund or interest bearing bank account. The customer earns dividends on the money market fund or interest on the bank account until such time as the customer chooses to liquidate the position in order to use the cash, for example, to purchase securities.

In recent years, broker-dealers have on occasion changed the product to which a customer's free credit balances are swept—most frequently from a money market fund product to an interest bearing bank account. There are differences in these two types of products, including the type of protection afforded the customer in the event of an insolvency. The money market shares—as securities—would receive up to $500,000 in SIPA protection in the event the broker-dealer failed. The bank deposits—as cash—would receive $100,000 in protection from the Federal Deposit Insurance Corporation (''FDIC'') in the event the bank failed. On the other hand, the money market fund as a security theoretically could lose its principal; whereas the bank deposit would be guaranteed up to the FDIC's $100,000 limit. There also may be differences in the amount of interest earned from the two products. In short, while not judging the appropriateness of either option, we note there may be consequences to changing options and believe that customers should have a sufficient opportunity to make an informed decision.[33]

For these reasons, we are proposing to amend Rule 15c3–3 by adding a new paragraph (j) that would make it unlawful for a broker-dealer to convert, invest or otherwise transfer free credit balances except under three circumstances. The first circumstance, set forth in proposed paragraph (j)(2)(i) of Rule 15c3–3, would permit a broker-dealer to convert, invest, or otherwise transfer the free credit balances to any type of investment or other product, or to a different account within the broker-dealer or at another institution, or otherwise dispose of the free credit balances, but only upon a specific order, authorization, or draft from the customer, and only under the terms and conditions specified by the customer in the order, authorization or draft. This proposal is not addressing free credit balance sweeps to money market funds and bank deposit accounts, but rather the use of customer free credit balances for other purposes (*e.g.*, to purchase securities other than money market funds, or to transfer to a different account or financial institution). In these circumstances, the proposed paragraph would prohibit any investment, conversion, or other transfer of the free credit balances except on the customer's specific order, authorization, or draft.

The second and third circumstances, set forth in proposed paragraphs (j)(2)(ii) and (iii) of Rule 15c3–3, address the sweeping of free credit balances to either a money market fund or a bank deposit account. The former applies to new customers and the latter to existing customers as of the date the proposed amendments would become effective.

Proposed paragraph (j)(2)(ii) of Rule 15c3–3 would permit a broker-dealer to have the ability to change the sweep option of a new customer from a money market fund to a bank deposit account (and vice versa), provided certain specific conditions are met. First, the customer would need to agree prior to the change (*e.g.*, in the account opening agreement) that the broker-dealer could switch the sweep option between those two types of products. Second, the broker-dealer would need to provide the customer with all notices and disclosures regarding the investment and deposit of free credit balances required by the self-regulatory organizations for which the broker-dealer is a member.[34] Third, the broker-dealer would need to provide the customer with notice in the customer's quarterly statement that the money market fund or bank deposit account can be liquidated on the customer's demand and converted back into free credit balances held in the customer's securities account. Fourth, the broker-dealer would need to provide the customer with notice at least 30 calendar days before changing the product (*e.g.*, from one money market fund to another), the product type (*e.g.*, from a money market fund to a bank account), or the terms and conditions under which the free credit balances are swept. The notice would need to describe the change and explain how the customer could opt out of it.

The third circumstance, set forth in proposed paragraph (j)(2)(iii) of Rule

[30] Current paragraph (d)(4) of Rule 15c3–3 would be re-designated as paragraph (d)(5).

[31] The proposed amendment would not apply to securities that are sold for a customer but not obtained from the customer within 10 days after the settlement date. This circumstance is addressed by paragraph (m) of Rule 15c3–3, which requires the broker-dealer to close the transaction by purchasing securities of like kind and quantity. 17 CFR 240.15c3–3(m).

[32] *See* 17 CFR 240.15c3–3(a)(8).

[33] In 2005, The New York Stock Exchange LLC (''NYSE'') addressed the issue of disclosure. Specifically, the NYSE issued an information memo to its members discussing, among other things, the disclosure responsibilities of a broker-dealer offering a bank sweep program to its customers. *See* Information Memo 05–11 (February 15, 2005). The Memo stated that broker-dealers should disclose material differences in interest rates between the different products and, with respect to the bank sweep program, the terms and conditions, risks and features, conflicts of interest, current interest rates, the manner by which future interest rates will be determined, and the nature and extent of FDIC and SIPC protection. *See id.*

[34] *See* NYSE Information Memo 05–11 (February 15, 2005).

15c3–3, would apply to existing customers as of the effective date of the proposed rule. It would permit a broker-dealer to have the option to change an existing customer's sweep option from a money market fund to a bank deposit account (and vice versa), provided the second, third, and fourth conditions set forth in proposed paragraph (j)(2)(ii) discussed above were met. To minimize the burden on the broker-dealer, proposed paragraph (j)(2)(iii) would not require the broker-dealer to obtain the customer's previous agreement to permit the broker-dealer to switch the sweep option between money market fund products and bank deposit account products. This would avoid the necessity of having to amend each existing customer account agreement. Because all the other conditions in proposed paragraph (j)(2)(ii) would apply, the broker-dealer would be required to provide existing customers with the various notices and disclosures that must be made to new customers, including giving notice at least 30 calendar days before the sweep option was changed and in that notice explain the change and how the customer could opt out of it.

We request comment on all aspects of this proposed amendment, including: (1) Whether it would provide adequate protection to customers with respect to changes in the treatment of their free credit balances, (2) on the cost burdens (quantified to the extent possible) that would result if the condition in proposed paragraph (j)(2)(ii)(A) of Rule 15c3–3 to obtain a new customer's prior agreement were to be applied to existing customers, (3) whether there are other sweep products in addition to money market mutual funds and bank deposit accounts that could be contemplated in proposed paragraphs (j)(2)(ii) and (iii) of Rule 15c3–3, and (4) whether the treatment of free credit balances has already been adequately addressed by the self-regulatory organizations.

ii. Importation of Rule 15c3–2

Rule 15c3–2 requires a broker-dealer holding free credit balances to provide its customers (defined as any person other than a broker-dealer) at least once every three months with a statement of the amount due the customer and a notice that (1) the funds are not being segregated, but rather are being used in the broker-dealer's business, and (2) that the funds are payable on demand. The rule was adopted in 1964 before the adoption of Rule 15c3–3.[35] Since the adoption of Rule 15c3–3, a broker-dealer, as noted above, has been limited in how it may use customer free credit balances. While the reserve account required under Rule 15c3–3 is in the name of the broker-dealer and the assets therein remain a part of its capital, the assets in the account are held for the exclusive benefit of the broker-dealer's customers. In a liquidation of the broker-dealer, the assets in the account will be available to satisfy customer claims ahead of all other creditors.

We believe the adoption of Rule 15c3–3 has eliminated the need to have a separate Rule 15c3–2. At the same time, we believe certain of the requirements in Rule 15c3–2 should be imported into Rule 15c3–3; namely, the requirements that broker-dealers inform customers of the amounts due to them and that such amounts are payable on demand.[36] Accordingly, we are proposing to eliminate Rule 15c3–2 and amend Rule 15c3–3 to include these latter requirements.

We request comment on all aspects of this proposed amendment. Commenters are encouraged to provide data to support their views.

6. Aggregate Debit Items Charge

Note E(3) to the customer reserve formula (Rule 15c3–3a) requires a broker-dealer using the ''basic method'' of computing net capital under Rule 15c3–1 to reduce by 1% the total debits in Item 10 of the formula (*i.e.*, debit balances in customer's cash and margin accounts).[37] This 1% reduction in Item 10 debits lowers the amount of total debit items in the formula. Because the debits offset aggregate credits in determining customer reserve requirements, the reduction has the potential to increase the amount a broker-dealer must maintain in the reserve account. Under paragraph (a)(1)(ii)(A) of Rule 15c3–1 however, broker-dealers using the ''alternative standard'' [38] to compute their minimum net capital requirement must reduce aggregate debit items by 3% in lieu of the 1% reduction required by Note E(3).[39] Thus, the deduction applicable to alternative standard firms can result in an even larger reserve deposit requirement.

The Commission adopted the alternative standard as part of the 1975 amendments to Rule 15c3–1, which expanded the rule's scope to apply to all broker-dealers.[40] The alternative standard constituted a new way of providing for the capital adequacy of a broker-dealer in that it diverged from the traditional notion of limiting a firm's leverage.[41] The alternative standard instead imposes a capital requirement based on the size of the broker-dealer's commitments to its customers through margin lending and other transactions. Thus, it requires a broker-dealer to hold net capital equal to a percentage of its customer commitments. The alternative standard was designed to integrate a broker-dealer's capital requirement under Rule 15c3–1 with the customer protection requirements in Rule 15c3–3; hence it uses the aggregate debit computation required by Rule 15c3–3 to determine a broker-dealer's net capital requirement under Rule 15c3–1.[42]

As part of the amendments adopting the alternative standard, the Commission lowered the haircut on equity securities from 30% to 15% for a broker-dealer using the standard.[43] At the same time, it amended Rule 15c3–1 to require alternative standard firms to employ the greater 3% reduction of debit items.[44] The Commission explained the greater requirement as providing, ''in the event of a liquidation [of the broker-dealer], an additional cushion of secured debit items which will be available to satisfy customers with whom the broker or dealer effects transactions.'' [45]

Originally, the alternative standard required a broker-dealer to hold net capital equal to 4% of its customer debits.[46] The Commission lowered this requirement to 2% in 1982.[47] It explained its decision as being based on broker-dealers' improved back-office systems and increased use of clearing

[35] *See* Exchange Act Release No. 7266 (March 12, 1964).

[36] Rule 15c3–2 contains an exemption for broker-dealers that also are banking institutions supervised by a Federal authority. This exemption would not be imported into Rule 15c3–3 because there are no broker-dealers left that fit within the exemption. Further, under the proposed amendment, the definition of ''customer'' for purposes of the imported 15c3–2 requirements would be the definition of ''customer'' in Rule 15c3–3, which is somewhat narrower than the definition in Rule 15c3–2.

[37] Under the ''basic method,'' a broker-dealer cannot permit its aggregate indebtedness (generally total money liabilities) to exceed 1500% of its net capital. 17 CFR 15c3–1(a)(1)(i).

[38] Under the ''alternative standard,'' a broker-dealer's minimum net capital requirement is equal to 2% of the firm's aggregate debit items. 17 CFR 240.15c3–1(a)(1)(ii).

[39] 17 CFR 240.15c3–1(a)(1)(ii)(A).

[40] *See* Exchange Act Release No. 11497 (June 26, 1975). Prior to 1975, the rule only applied to broker-dealers that were not a member of a securities exchange, since exchange members were subject to capital rules promulgated by the exchanges. *Id.*

[41] *See id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] Exchange Act Release 18417 (January 13, 1982), 47 FR 3512 (January 25, 1982).

agencies.[48] These developments made it possible for the firms to handle large volumes of trading without experiencing operational and bookkeeping problems.[49] The Commission also noted that the SROs had upgraded their surveillance programs and that the early warning rules of both the Commission and the SROs remained significantly higher than the 2% minimum requirement.[50]

In recent years, the amount of debit items carried by broker-dealers has increased substantially. Consequently, the 3% reduction in debit items has required many broker-dealers using the alternative standard to increase their reserve deposits by additional amounts that are far in excess of the additional cushion envisioned when the amendment was adopted in 1975. Furthermore, the level of risk assumed by broker-dealers does not increase proportionately as the aggregate amount of debits increases; due, in part, to an increase in diversity among the debits. The proportional 3% reduction of debit items does not recognize this diversification benefit.

Moreover, in 1992, the Commission amended Rule 15c3–1 to lower the haircut for broker-dealers using the basic method to 15%, which brought their requirement in line with the alternative standard firms.[51] The 15% haircut for equity securities has proven sufficient to cover most market moves and, therefore, we believe the increased level of protection derived from the greater 3% debit item reduction likely would not provide a benefit justified by the costs.

For these reasons, we believe it is now appropriate to treat broker-dealers using the alternative standard on a par with firms using the basic method and, therefore, propose lowering the debit reduction applicable to alternative standard firms. We would apply a 1% reduction, rather than a 3% reduction, for alternative standard firms. The 1% reduction should provide an adequate cushion, given these firms' current levels of debit items, which—as noted—are far greater than existed when the rule was adopted in 1975 or amended in 1982. Our proposal would amend paragraph (a)(1)(ii)(A) of Rule 15c3–1 by removing the provision requiring the 3% reduction. This would make alternative standard firms subject to the 1% reduction in debit items as required in Note E(3) of Rule 15c3–3a.

We request comment on all aspects of this proposed amendment, including whether the benefits of the 3% reduction outweigh any costs that might arise from the proposal. Commenters are requested to identify potential costs and provide data to support their views.

7. ''Proprietary Accounts'' Under the Commodity Exchange Act

Certain broker-dealers also are registered as futures commission merchants under the Commodity Exchange Act (''CEA''). These firms carry both securities and commodities accounts for customers. The definition of ''free credit balances'' in paragraph (a)(8) of Rule 15c3–3 excludes funds that are carried in commodities accounts that are segregated in accordance with the requirements of the CEA.[52] However, regulations promulgated under the CEA exclude certain types of accounts (''proprietary accounts'') from the segregation requirement.[53] The question has arisen as to whether a broker-dealer holding these types of accounts must include funds in them as ''free credit balances'' when performing a customer reserve computation.

These funds likely would not be protected in a SIPA proceeding because they are related to commodities transactions.[54] The purpose behind the cash reserve requirements in Rule 15c3–3 is to require broker-dealers to hold sufficient funds with which to satisfy customer claims arising from securities (not commodities) transactions and, thereby, to minimize the need for a SIPA liquidation. This purpose would not be served by treating funds held in commodities accounts (that are not segregated under CEA regulations) as ''free credit balances.'' Accordingly, we are proposing an amendment to paragraph (a)(8) of Rule 15c3–3, which would clarify that funds held in a commodity account meeting the definition of a ''proprietary account'' under CEA regulations are not to be included as ''free credit balances'' in the customer reserve formula.

We request comment on all aspects of this proposed amendment. Commenters are encouraged to provide data to support their views.

B. Holding Futures Positions in a Securities Portfolio Margin Account

The Chicago Board of Options Exchange, Incorporated (''CBOE'') and the NYSE have amended their margin rules to permit broker-dealer members to compute customer margin requirements using a portfolio margin methodology (''Portfolio Margin Rules'').[55] A portfolio margining methodology computes margin requirements based on the net market risk of all positions in an account assuming certain potential market movements. Under the Portfolio Margin Rules, a broker-dealer can combine securities and futures positions into the portfolio margin account. SIPA, however, only protects customer claims for securities and cash and specifically excludes from protection futures contracts that are not also securities.[56] This raises a question as to how futures positions in a portfolio margin account would be treated in a SIPA liquidation. Consequently, we are proposing amendments to Rules 15c3–3 and 15c3–3a that are designed to provide the protections of Rule 15c3–3 and SIPA to futures positions in a securities account under the Portfolio Margin Rules.

First, we propose amending the definition of ''free credit balances'' in paragraph (a)(8) of Rule 15c3–3 to include funds resulting from margin deposits and daily marks to market related to, and proceeds from the liquidation of, futures on stock indices and options thereon carried in a securities account pursuant to a portfolio margining rule of an SRO. Under this amendment, a broker-dealer holding such funds would have to treat them as ''credit items'' for purposes of the customer reserve computation. Consequently, the futures-related funds

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] Exchange Act Release No. 31511 (November 24, 1992), 57 FR 56973 (December 2, 1992).

[52] 17 CFR 240.15c3–3(a)(8).

[53] Rule 1.20 (17 CFR 1.20) requires a futures commission merchant to segregate ''customer'' funds. Rule 1.3(k) (17 CFR 1.3(k)) defines the term ''customer'' for this purpose. The definition of ''customer'' excludes persons who own or hold a ''proprietary account'' as that term is defined in Rule 1.3(y) (17 CFR 1.3(y)). Generally, the definition of ''proprietary account'' refers to persons who have an ownership interest in the futures commission merchant. *See* 17 CFR 1.3(y).

[54] To receive protection under SIPA, a claimant must first qualify as a ''customer'' as that term is defined in the statute. Generally, a ''customer'' is any person who has (1) ''a claim on account of securities received, acquired, or held by the [broker-dealer],'' (2) ''a claim against the [broker-dealer] arising out of sales or conversions of such securities'' or (3) ''deposited cash with the debtor for the purposes of purchasing securities.'' 15 U.S.C. 78*lll*(2). The definition of ''security'' in SIPA specifically excludes commodities and non-securities futures contracts (see 15 U.S.C. 78*lll*(14)) and, thus, a person with a claim for such assets would not meet the definition of ''customer.''

[55] Exchange Act Release No. 54918 (December 12, 2006), 72 FR 1044 (January 9, 2007) (SR–NYSE–2006–13); Exchange Act Release No. 54919 (December 12, 2006), (SR–CBOE 2006–14); Exchange Act Release No. 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005) (SR–NYSE–2002–19); Exchange Act Release No. 52032 (July 14, 2005), 70 FR 42118 (July 21, 2005) (SR–CBOE–2002–03).

[56] The definition of ''security'' in SIPA includes a futures contract that also is a security; namely, a ''security future'' as defined in section 3(a)(55)(A) of the Exchange Act. See 15 U.S.C. 78*lll*(14).

in a portfolio margin account would need to be included with all other credit items when a broker-dealer computed its customer reserve requirement under Rule 15c3–3. Further, because free credit balances constitute ''cash'' in a customer's account, they are ''cash'' for purposes of determining a customer's ''net equity'' in a SIPA liquidation.[57]

Our proposed amendment to the definition of ''free credit balances'' also would bring within the definition's scope the market value of futures options in a portfolio margin account as of the SIPA ''filing date.''[58] Unlike futures contracts, futures options do not take the form of cash balances in the account (*i.e.*, they have market value at the end of a trading day). Since the broker-dealer is not holding cash for the customer there is not the need to treat the futures options as a ''free credit balance'' and require a credit in the reserve formula. However, if the broker-dealer is liquidated under SIPA, the unrealized gains or losses of the futures options should be included in calculating the customer's net equity in the account (along with the cash balances related to the futures contracts and the securities positions and related cash balances). The proposed amendment is designed to provide for this outcome by defining the market value of the futures options as a free credit balance in the event the broker-dealer becomes subject to a SIPA proceeding. As ''free credit balances,'' funds resulting from margin deposits and daily marks to market related to futures and the market value of futures options as of the SIPA filing date would constitute claims for cash in a SIPA proceeding and, therefore, become a part of a customer's ''net equity'' claim and be entitled to up to $100,000 in advances to make up for shortfalls.[59]

On the debit side of the customer reserve formula, we are proposing an amendment to Rule 15c3–3a Item 14 that would permit the broker-dealer to include as a debit item the amount of customer margin required and on deposit at a futures clearing organization related to futures positions carried in a securities account pursuant to an SRO portfolio margin rule. Under SIPA, the term ''customer property'' includes ''resources provided through the use or realization of customers'' debit cash balances and other customer-related debit items as the Commission defines by rule.''[60] Under this provision of SIPA, this proposed amendment to Rule 15c3–3a would make the margin required and on deposit at a futures clearing organization part of the ''customer property'' in the event the broker-dealer is placed in a SIPA liquidation.[61] Thus, it would be available to the liquidation trustee for distribution to the failed firm's customers.

We believe our proposed amendments designed to provide the protections of Rule 15c3–3 and SIPA to all positions in a securities account established under an SRO portfolio margin rule are warranted given that the futures positions in the account serve as hedges for the securities positions and, therefore, reduce the risk of the securities positions. The intermingled nature of the positions, margin or deposit, and the fact that the futures positions reduce the amount of margin necessary to carry the securities positions makes it highly practical to treat all the positions in accordance with the requirements of Rule 15c3–3 and, as part of the customer's ''net equity'' in a SIPA liquidation.

We solicit comment on whether this approach represents a workable solution to providing SIPA protection to portfolio margin accountholders. In particular, we request comment as to whether there are other approaches the Commission may pursue that are designed to provide SIPA protection to futures related cash and futures options in portfolio margin accounts.

C. Amendments With Respect to Securities Lending and Borrowing and Repurchase/Reverse Repurchase Transactions

Securities lending and repurchase transactions by institutions are an important element of the financial markets. In a typical securities lending transaction, the parties agree that the owner of the securities (*e.g.*, a pension fund, institutional investor, bank, or broker-dealer) will lend securities to a borrower, and the borrower will be required to return securities of like kind and quantity to the lender. To protect the lender's interest, the borrower typically will provide cash or other securities as collateral in excess of the market value of the securities loaned.[62] In the typical securities repurchase/reverse repurchase transaction (''repo transactions''), a buyer agrees to purchase securities from a seller and the seller agrees to repurchase them at some time in the future at the sale price plus some additional consideration. Thus, if the securities increase in value, the seller is at risk that the buyer will default on its obligation to resell them at the original contract price. Conversely, if the securities decrease in value, the buyer is at risk that the seller will default on its obligation to repurchase them at the original contract price. To address these risks, the securities underlying the agreement are marked to market daily and, if their value rises above the contract price, the buyer provides margin to the seller to secure the buyer's obligation to resell the securities at a price lower than market value. Alternatively, if the value of the securities falls below the contract price, the seller provides margin to the buyer to secure the seller's obligation to repurchase the securities at a price above the market value.

In addition to participating in securities lending transactions, broker-dealers provide a variety of services to other borrowers and lenders, including counterparty credit evaluation, collateral management, and administration of distributions and corporate actions. Moreover, a broker-dealer may negotiate the loan as agent for both parties (divulging their identities just prior to the transaction) or by interposing itself as principal between two undisclosed counterparties as a conduit lender.

The failure of MJK Clearing, Inc. (''MJK'')—the largest SIPA liquidation to date—raised several concerns regarding securities lending transactions. The

[57] If a person qualifies as a ''customer'' under SIPA, the next inquiry is to value the amount of the customer's claim. This step is accomplished by reference to the definition of ''net equity'' in SIPA. 15 U.S.C 78*lll*(11). Generally, ''net equity'' is the ''dollar amount of the [customer's] account'' as determined by calculating the sum that would have been owed the customer had the securities in the customer's account been liquidated on the date the SIPA proceeding was commenced minus any amounts owed by the customer to the broker-dealer.

[58] The term ''filing date'' is defined in SIPA as, generally, being the date a SIPA proceeding is commenced. *See* 15 U.S.C. 78*lll*(7).

[59] Generally, futures and futures options in a portfolio margin account would be transferred to a solvent broker-dealer or liquidated before the initiation of a SIPA proceeding. Consequently, these proposals are highly cautionary as it is unlikely that a broker-dealer would be placed in a SIPA liquidation while still holding these types of positions in customer accounts.

[60] 15 U.S.C. 78*lll*(4)(B).

[61] Margin posted at a futures clearing organization for securities futures products currently is treated in this manner. *See* 17 CFR 240.15c3–3a.

[62] In computing net capital under Rule 15c3-1, a broker-dealer generally must make a deduction in the amount that the market value of securities loaned exceeds the value of collateral received. 17 CFR 240.15c3-1(c)(2)(iv)(B). Likewise, a broker-dealer must make a deduction in the amount the value of collateral posted exceeds the value of securities borrowed to the extent the excess is greater than certain percentages. This permits the broker-dealer to provide excess collateral in conformance with industry standards without taking the deduction. In either case, the broker-dealer is not required to take the deduction, provided it issues a mark-to-market call and collects payment the same day.

Commission, in two civil complaints,[63] alleged that MJK engaged in conduit securities lending transactions involving shares of a company called GenesisIntermedia, Inc. According to the complaints, MJK borrowed shares of GenesisIntermedia from one broker-dealer, providing cash collateral equal to the market value of the borrowed shares. MJK then re-lent the GenesisIntermedia shares to other broker-dealers that provided cash collateral in return. As indicated in the complaints, after the transactions, the market value of the GenesisIntermedia shares declined dramatically. The complaints also describe how MJK returned cash collateral to the borrowing broker-dealers as the shares declined in value but did not collect excess cash collateral provided to the broker-dealer that lent the shares to MJK. Eventually, MJK went out of business. At the time of its failure, MJK still owed cash collateral to several of the borrowing broker-dealers.[64]

MJK's failure caused losses to the borrowing broker-dealers and to other firms to whom those broker-dealers re-lent the borrowed securities.[65] In subsequent litigation, disputes have arisen as to whether certain of these broker-dealers were acting as principals or agents.[66] Uncertainty as to whether broker-dealers are acting as principal or agent in a securities loan transaction raises concerns as to whether firms are taking required net capital charges related to their securities lending activities.[67] A broker-dealer might not take the required charges on the theory that it was arranging the loans as agent, rather than principal, notwithstanding the fact that there was no express disclaimer of principal liability.

We are proposing two amendments designed to improve regulatory oversight of securities lending and repo transactions. The first proposal would amend subparagraph (c)(2)(iv)(B) to Rule 15c3–1 to clarify that broker-dealers providing securities lending and borrowing settlement services are assumed, for purposes of the rule, to be acting as principals and are subject to applicable capital deductions. Under the proposed amendment, these deductions could be avoided if a broker-dealer takes certain steps to disclaim principal liability. Namely, the broker-dealer would be required to disclose the identities of the borrower and lender to each other and obtain written agreements from the borrower and lender stating that the broker-dealer is acting exclusively as agent and assumes no principal liability in connection with the transaction.[68]

The second proposal would add a paragraph (c)(5) to Rule 17a–11, which would require broker-dealers to notify the Commission whenever the total amount of money payable against all securities loaned or subject to a repurchase agreement, or the total contract value of all securities borrowed or subject to a reverse repurchase agreement exceeds 2,500 percent of tentative net capital; provided that, for purposes of this leverage threshold, transactions involving ''government securities'' as defined in Section 3(a)(42) of the Exchange Act, are excluded from the calculation.[69] Based on FOCUS report data, we estimate that a leverage threshold of 25 times tentative net capital would be triggered by 21 broker-dealers on a regular basis. We believe that this indicates the proposed threshold is high enough to only capture on a regular basis those few firms highly active in securities lending and repos. Accordingly, it is an appropriate notice trigger for a firm that historically has not been as active in these transactions but rapidly leverages up its positions.

We believe that receiving notice when this threshold is exceeded would help identify broker-dealers with highly leveraged non-government securities lending and borrowing and repo operations and make it easier for regulators to respond more quickly and protect customers in the event a firm is approaching insolvency. To avoid frequent filing by firms that engage predominantly in securities lending and repo transactions, the proposal would give a broker-dealer the option of submitting monthly reports regarding its securities lending and repo activities to its designated examining authority.

We request comment on all aspects of these proposed amendments, including whether there are other steps the Commission should take to reduce the risk that a broker-dealer will fail as a consequence of a breakdown in its securities lending or repurchase activities. We also seek comment on the appropriateness of the 2,500% of tentative net capital early warning trigger and whether a smaller or larger leverage test should be employed.

D. Documentation of Risk Management Procedures

The failure of MJK highlights the importance of broker-dealers documenting their implemented controls for managing the material risk exposures that arise from their business activities. For example, a broker-dealer active in securities lending is exposed to a variety of risks, including market risk,[70] credit risk,[71] liquidity risk [72] and operational risk.[73] Other broker-dealer activities give rise to these risks as well, including managing a repo book, dealing in OTC derivatives, trading proprietary positions and lending on margin. A well-documented system of internal controls designed to manage material risk exposures enables a broker-dealer's management to identify, analyze, and manage the risks inherent in the firm's business activities with a view to preventing significant losses. The need for such controls is particularly urgent with respect to the

[63] *See* SEC Litigation Release No. 18641, 2004 LEXIS 706 (March 26, 2004); SEC Complaint, *SEC* v. *Thomas G. Brooks*, Civil Action No. CV 03–3319 ADM/AJB, United States District Court (D. Minn. June 2, 2003); *SEC* v. *Thomas G. Brooks*, SEC Litigation Release No. 18168, 2003 SEC LEXIS 1321 (June 3, 2003); SEC Complaint, *SEC* v. *Kenneth P. D'Angelo et al.*, Case No. LACV 03–6499 CAS (VBKx), United States District Court (C.D.Cal. September 11, 2003); SEC Litigation Release No. 18344, 2003 SEC LEXIS 2173 (September 11, 2003).

[64] *Id.*; *See also*, *In re MJK Clearing, Inc.*, 2003 U.S. Dist. LEXIS 5954 (D.Minn. 2003).

[65] *See, e.g.*, *Nomura* v. *E*Trade*, 280 F.Supp. 2d 184 (S.D.N.Y. 2003).

[66] *See id.*

[67] Under paragraph (c)(2)(iv)(B) of Rule 15c3–1, broker-dealers are required to deduct from net worth most unsecured receivables, including the amount that the market value of a securities loan exceeds the value of collateral obtained for the loan. Similarly, with respect to repo transactions, a broker-dealer obligated to resell securities must, in computing net capital, deduct the amount that the market value of the securities is less than the resale price. 17 CFR 240.15c3–1(c)(2)(iv)(F). A broker-dealer obligated to repurchase securities must, in computing net capital, deduct the amount that the market value of the securities is greater than the repurchase price to the extent the excess is greater than certain percentages. 17 CFR 240.15c3–1(c)(2)(iv)(F).

[68] Standard master securities loan agreements (including the annexes thereto) commonly used by the parties to a securities lending transaction contain similar provisions for establishing agent (as opposed to principal) status in a securities lending and borrowing transaction. *See*, *e.g.*, 2000 Master Securities Loan Agreement, Annex I, published by The Bond Market Association.

[69] 15 U.S.C. 78c(a)(42). ''Government securities'' generally present less market risk than other types of securities used in securities lending and repo transactions. Consequently, they are excluded from the scope of this proposed rule.

[70] Market risk involves the risk that prices or rates will adversely change due to economic forces. Such risks include adverse effects of movements in equity and interest rate markets, currency exchange rates, and commodity prices. Market risk can also include the risks associated with the cost of borrowing securities, dividend risk, and correlation risk.

[71] Credit risk comprises risk of loss resulting from counterparty default on loans, swaps, options, and during settlement.

[72] Liquidity risk includes the risk that a firm will not be able to unwind or hedge a position or meet cash demands as they become due.

[73] Operational risk encompasses the risk of loss due to the breakdown of controls within the firm including, but not limited to, unidentified limit excesses, unauthorized trading, fraud in trading or in back office functions, inexperienced personnel, and unstable and easily accessed computer systems.

largest broker-dealers, which generally engage in a wide range of highly complex businesses across many different markets and geographical locations.

We believe that, for the most part, these firms as a matter of business practice already have well-documented procedures and controls for managing risks. Moreover, many are part of a public company subject to the requirements of section 404 of the Sarbanes-Oxley Act of 2002,[74] and the Commission's rules thereunder,[75] which require the company to include in its annual report a report of management on the company's internal control over financial reporting. Notwithstanding the fact that many broker-dealers already have documented their implemented internal controls as a matter of business practice or because they are part of public companies subject to the requirements under Sarbanes-Oxley, we believe it is important to reinforce the practice, particularly for broker-dealers that are not part of public companies, and make it easier for regulators to access a broker-dealer's procedures and controls. Consequently, we are proposing amendments to the books and records rules that would require certain broker-dealers to make and keep current records documenting their implemented systems of internal risk management control.

The proposal would add a paragraph (a)(23) to Rule 17a–3, which would require certain large broker-dealers to document any implemented internal risk management control designed to assist in analyzing and managing the risks (*e.g.*, market, credit, liquidity, operational) arising from the business activities it engages in, including, for example, securities lending and repo transactions, OTC derivative transactions, proprietary trading and margin lending. The requirement only would apply to broker-dealers that have more than (1) $1,000,000 in aggregate credit items as computed under the customer reserve formula of Rule 15c3–3, or (2) $20,000,000 in total capital including debt subordinated in accordance with Appendix D to Rule 15c3–1. This would limit the proposed rule's application to the broker-dealers that, because of their complexity and size, are subject to the greatest risks and whose failure to adequately manage the risks could have the largest systemic impact. We estimate there are approximately 500 such firms.

The proposal also would add a paragraph (e)(9) to Rule 17a–4, which would require a broker-dealer to maintain these records for three years after the date the broker-dealer ceases to use the system of controls. We believe that the additional three years creates an audit trail between former and current procedures and provides regulators with sufficient opportunity to review the records during the broker-dealer's normal exam cycle.

We are not proposing any minimum elements that would be required to be included in a firm's internal controls or specifying issues that should be addressed. Rather, the amendment is designed to ensure that broker-dealers clearly identify the procedures, if any, they use to manage the risks in their business. We believe the proposed documentation requirement would help firms and their designated examining authorities identify gaps in their internal procedures. Moreover, broker-dealers that have already documented their internal controls would not be required to take any further steps other than to retain the written procedures for three years after new controls were put in place and maintain the procedures in a manner that makes them readily available to the Commission and other securities regulators (to the extent they were not already readily available).

We request comment on all aspects of these amendments, including whether either of the criteria as to which broker-dealers would be subject to the proposed requirement should be lower or higher, or whether we should consider some other criteria for application of the proposed requirement.

E. Amendments to the Net Capital Rule

1. Requirement To Subtract From Net Worth Certain Liabilities or Expenses Assumed by Third Parties and Non-Permanent Capital Contributions

Under Rule 15c3–1, broker-dealers are required to maintain, at all times, a minimum amount of net capital. The rule generally defines ''net capital'' as a broker-dealer's net worth (assets minus liabilities), plus certain subordinated liabilities, less certain assets that are not readily convertible into cash (*e.g.*, fixed assets), and less a percentage (haircut) of certain other liquid assets (*e.g.*, securities).[76] Broker-dealers are required to calculate net worth using generally accepted accounting principles.

Based on our experience, we are concerned that some broker-dealers may be excluding from their calculations of net worth certain liabilities that relate directly to expenses or debts incurred by the broker-dealer. The accounting justification for the exclusion is that a third-party (usually a parent or affiliate) has assumed responsibility for these expenses and debts through an expense sharing agreement. In some cases, however, the third-party does not have the resources—independent of the broker-dealer's revenues and assets—to assume these liabilities. Thus, the third-party is dependent on the resources of the broker-dealer to pay the expenses and debts. Excluding liabilities from the broker-dealer's net worth calculation in these situations may misrepresent the firm's actual financial condition, deceive the firm's customers, and hamper the ability of regulators to monitor the firm's financial condition.

For these reasons, we are proposing an amendment to Rule 15c3–1 that would add a new paragraph (c)(2)(i)(F) requiring a broker-dealer to adjust its net worth when calculating net capital by including any liabilities that are assumed by a third-party if the broker-dealer cannot demonstrate that the third-party has the resources independent of the broker-dealer's income and assets to pay the liabilities. To evidence a third-party's financial capacity, the broker-dealer could maintain as a record the third party's most recent and current (*i.e.*, as of a date within the previous twelve months) audited financial statements, tax return or regulatory filing containing financial reports.

Based on our experience, we also are concerned that broker-dealers may be receiving capital contributions from individual investors that are subsequently withdrawn after a short period of time (often less than a year). In some cases, the capital may be contributed under an agreement giving the investor the option to withdraw the capital at the investor's discretion. In the past, the Commission has emphasized that capital contributions to broker-dealers should not be temporary[77] and the Commission staff has explained that a capital contribution should be treated as a liability if it is made with the understanding that the contribution can be withdrawn at the option of the investor.[78] We are

[74] Pub. L. 107–204, 116 Stat. 745 (2002).

[75] *See* Securities Act Release No. 8238, Exchange Act Release No. 47986; Investment Company Act Release No. 26068 (June 5, 2003), 68 FR 36635 (June 18, 2003).

[76] *See* 17 CFR 240.15c3–1(c)(2).

[77] *See Study of Unsafe and Unsound Practices of Broker-Dealers, Report and Recommendations of the Securities and Exchange Commission*, H.R. Doc. NO. 92–231 (1971).

[78] Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation,

Continued

proposing to codify these views by amending Rule 15c3–1 to add a paragraph (c)(2)(i)(G), which would require a broker-dealer to treat as a liability any capital that is contributed under an agreement giving the investor the option to withdraw it. The provision also would require a broker-dealer to treat as a liability any capital contribution that is intended to be withdrawn within a year unless the broker-dealer receives permission in writing from its designated examining authority.[79] Under paragraph (c)(2)(i)(G)(*2*) of the proposed rule, a withdrawal made within one year of the contribution is presumed to have been intended to be withdrawn within a year and, therefore, presumed to be subject to the deduction.

We request comment on all aspects of these proposed amendments, including suggestions for records (in addition to audited financial statements, tax returns and regulatory filings) by which a broker-dealer could demonstrate a third-party's current financial capacity. We also request comment on potential metrics for measuring whether the third-party has sufficient financial resources to assume the broker-dealer's expenses for the purposes of calculating net capital under Rule 15c3–1. For example, would it be sufficient if the third-party's most recent financial statement, tax return or filing showed an amount of annual net revenue, excluding income derived from the broker-dealer (*e.g.*, from management fees or dividends) that equaled or exceeded the broker-dealer's annual expenses assumed by the third-party? Would it be sufficient if a financial statement or filing showed the third-party had an amount of equity capital that, at a minimum, equaled 100%, 150%, 200%, 1000% or some other percentage of the broker-dealer's annual expenses assumed by the third-party?

With respect to the proposal on capital contributions and withdrawals, we request comment on whether the time period within which withdrawn and intended to be withdrawn contributions must be treated as liabilities should be longer than one year.

2. Requirement To Deduct the Amount a Fidelity Bond Deductible Exceeds SRO Limits

Under SRO rules, certain broker-dealers that do business with the public or are required to become members of the Securities Investor Protection Corporation (''SIPC'') must comply with mandatory fidelity bonding requirements.[80] While the form and amounts of the bonding requirements vary based on the nature of a broker-dealer's business, the SRO rules typically permit a broker-dealer to have a deductible provision included in the bond. However, the rules provide that the deductible may not exceed certain amounts.[81] With regard to firms that maintain deductible amounts over the maximum amount permitted, a number of SRO rules provide that the broker-dealer must deduct this excess amount from net worth when calculating net capital under Rule 15c3–1.[82]

Rule 15c3–1, however, does not specifically reference the SRO deductible requirements as a charge to capital. Accordingly, while the SROs require that the excess fidelity bond be deducted from net capital, the Commission's rule does not specify such a deduction. This means that a broker-dealer would not be required for the purposes of Commission rules to show the impact of the deduction in the net capital computation on the FOCUS report it is required to periodically file.[83] To address this gap, we are proposing to amend Rule 15c3–1 by adding a paragraph (c)(2)(xiv) that would require a broker-dealer to deduct, with regard to fidelity bonding requirements prescribed by a broker-dealer's examining authority, the excess of any deductible amount over the maximum deductible amount permitted. We believe the fidelity bonding requirement is an important prudential safeguard because it serves as a measure to protect the broker-dealer's capital from unforeseen losses arising from, among other events, improper activity by an employee.[84]

We request comment on all aspects of this proposed amendment.

3. Broker-Dealer Solvency Requirement

We are proposing an amendment to Rule 15c3–1 that would require a broker-dealer to cease its securities business activities if certain insolvency events occur. The proposed amendment would prevent a broker-dealer from continuing to conduct a securities business while it is seeking protection in a bankruptcy proceeding. A broker-dealer that has made an admission of insolvency, or is otherwise deemed insolvent or entitled to protection from creditors, does not possess the financial resources necessary to operate a securities business. Continuing to operate in such circumstances poses a significant credit risk to counterparties and to the clearance and settlement system, and, in the event the firm ends up in a liquidation proceeding under SIPA, may impair the ability of the SIPA trustee to make customers of the broker-dealer whole and satisfy claims of other creditors out of the assets of the general estate.

We are proposing to amend paragraph (a) of Rule 15c3–1 to provide that a broker-dealer shall not be in compliance with the rule if the firm is ''insolvent'' as that term is defined in the rule. ''Insolvent'' would be defined in a new paragraph (c)(16) as, among other things, a broker-dealer's placement in a voluntary or involuntary bankruptcy or similar proceeding; the appointment of a trustee, receiver or similar official; a general assignment by the broker-dealer for the benefit of its creditors; an admission of insolvency; or the inability to make computations necessary to establish compliance with Rule 15c3–1. The proposed definition of ''insolvent'' is intended to be broad enough to encompass any type of insolvency proceeding or condition of insolvency.[85] By making solvency a requirement of Rule 15c3–1, a broker-dealer that is insolvent would have to cease conducting business because section 15(c)(3) of the Exchange Act generally prohibits a broker-dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security in contravention of

Commission, to Raymond J. Hennessy, Vice President, NYSE, and Susan DeMando, Vice President, NASD Regulation, Inc. (February 23, 2000).

[79] These requirements would not apply to withdrawals covered by paragraph (e) (4)(iii) of Rule 15c3–1, namely, withdrawals used to make tax payments or to pay reasonable compensation to partners. These types of payments are ordinary business expenditures and do not raise the types of concerns the proposed rule is designed to address.

[80] *See*, *e.g.*, NYSE Rule 319, NASD Rule 3020, CBOE Rule 9.22, and Amex Rule 330. SRO fidelity bonding requirements typically contain agreements covering the following areas: A ''Fidelity'' insuring clause to indemnify against loss of property through dishonest or fraudulent acts of employees; an ''On Premises'' agreement insuring against losses resulting from crimes such as burglary and theft and from misplacement of property of the insured; an ''In Transit'' clause indemnifying against losses occurring while property is in transit; a ''Forgery and Alteration'' agreement insuring against loss due to forgery or alteration of various kinds of negotiable instruments; and a ''Securities Loss'' clause protecting against losses incurred through forgery and alteration of securities. *Id.*

[81] *See*, *e.g.*, NYSE Rule 319(b), which permits NYSE members and member organizations to self-insure to the extent of $10,000 or 10% of the minimum insurance requirement as prescribed by the NYSE.

[82] *See*, *e.g.*, NYSE Rule 319(b); NASD Rule 3020(b)(2).

[83] *See* 17 CFR 240.17a–5.

[84] *See*, *e.g.*, NYSE Rule 319, which specifies the type of coverage the bond must provide.

[85] For example, the proposed definition incorporates concepts of insolvency in the U.S. Bankruptcy Code and SIPA. *See* 11 U.S.C. 101; 15 U.S.C. 78eee(b)(1).

the Commission's financial responsibility rules (which include Rule 15c3–1).[86]

We also are proposing an amendment to the first sentence of paragraph (b)(1) of Rule 17a–11 that would require a broker-dealer meeting the definition of ''insolvent'' to provide immediate notice to the Commission, the firm's designated examining authority and, if applicable, the CFTC. This notice would assist regulators in taking steps to protect the insolvent firm's customers, including, if appropriate, notifying SIPC of the need to commence an SIPA liquidation.

We request comment on all aspects of these proposed amendments, including whether there are other insolvency events that should be captured in the definition.

4. Amendment To Rule Governing Orders Restricting Withdrawal of Capital From a Broker-Dealer

Paragraph (e) of Rule 15c3–1 places certain conditions on a broker-dealer when withdrawing capital.[87] For example, a broker-dealer must give the Commission two days notice before a withdrawal that would exceed 30% of the firm's excess net capital and two days notice after a withdrawal that exceeded 20% of that measure.[88] Paragraph (e) also restricts capital withdrawals that would have certain financial impacts on a broker-dealer such as lowering net capital below certain levels.[89] Finally, under the rule, the Commission may issue an order temporarily restricting a broker-dealer from withdrawing capital or making loans or advances to stockholders, insiders, and affiliates under certain circumstances.[90] The rule, however, limits such orders to withdrawals, advances, or loans that, when aggregated with all other withdrawals, advances, or loans on a net basis during a thirty calendar day period, exceed thirty percent of the firm's excess net capital.[91] The rule also requires that the Commission conclude, based on the facts and information available that a withdrawal, advance, or loan in excess of thirty percent of the broker-dealer's excess net capital may be detrimental to the financial integrity of the firm, or may unduly jeopardize the firm's ability to repay its customer claims or other liabilities which may cause a significant impact on the markets or expose the customers or creditors of the firm to loss without taking into account the application of the SIPA.[92] The order may restrict such withdrawals, advances, or loans for a period of up to twenty business days.[93]

Paragraph (e) of Rule 15c3–1 was adopted in the aftermath of the failure of the investment bank holding company Drexel Burnham Lambert, Inc. (''Drexel'').[94] At the time of its adoption, the Commission pointed out that Drexel, prior to its failure, withdrew substantial capital from its regulated broker-dealer subsidiary over a period of three weeks in the form of short term loans.[95] The withdrawals were made without notifying the Commission or the broker-dealer's designated examining authority.[96] Moreover, part of the broker-dealer's capital consisted of hard to price high yield bonds.[97] This made it difficult to determine the firm's actual net capital amount and, consequently, whether it was in capital compliance.[98]

Since the adoption of Rule 15c3–1(e) in 1991, the Commission only once has issued an order restricting a broker-dealer from withdrawing capital.[99] Specifically, on October 13, 2005, the Commission ordered the two broker-dealer subsidiaries of REFCO, Inc.—REFCO Securities, LLC and REFCO Clearing, LLC—to restrict capital withdrawals, advances, and loans.[100] The Commission issued the order after REFCO, Inc. announced that its financial statements for 2002 through 2005 should not be relied on and that a material unregulated subsidiary (REFCO Capital Markets, Ltd.) had ceased all activities for a 15-day period.[101]

As required under Rule 15c3–1(e), the Commission's order with respect to REFCO's broker-dealer subsidiaries only restricted capital withdrawals, loans and advances to the extent they would exceed 30% of the broker-dealer's excess net capital when aggregated with other such transactions over a 30-day period. The Commission and other securities regulators often discover that the books and records of a troubled broker-dealer are incomplete or inaccurate. This can make it difficult to determine the firm's actual net capital and excess net capital amounts. In such a case, an order that limits withdrawals to a percentage of excess net capital would be difficult to enforce as it would not be clear when that threshold had been reached. Given the circumstances, we believe the better approach is to remove the 30% of excess net capital limitation. This would simplify the orders by allowing the Commission to restrict all withdrawals, advances, and loans. All the other conditions in the rule would be preserved.

We request comment on all aspects of this proposed amendment.

5. Adjusted Net Capital Requirements

i. Amendment to Appendix A of Rule 15c3–1

We are proposing an amendment to Appendix A of Rule 15c3–1, which permits broker-dealers to employ theoretical option pricing models to calculate haircuts for listed options and related positions that hedge those options.[102] Non-clearing option specialists and market makers need not apply haircuts to their proprietary listed options positions, provided the broker-dealer carrying their account takes a charge to its own net capital based on the charge computed using the theoretical pricing model.[103] In 1997, the Commission adopted a temporary amendment to Appendix A that, by virtue of decreasing the range of pricing inputs to the model, effectively reduced the haircuts applied by the carrying firm with respect to non-clearing option specialist and market maker accounts.[104] The temporary amendment, which only applied to these types of accounts, was limited to major market foreign currencies and diversified indexes. The Commission made this relief—which is contained in paragraph (b)(1)(iv) of Appendix A [105]—temporary so the Commission could evaluate the effects of the reduced capital charges, particularly under

[86] 15 U.S.C. 78o.

[87] *See* 17 CFR 240.15c3–1(e).

[88] 17 CFR 240.15c3–1(e)(1).

[89] 17 CFR 240.15c3–1(e)(2).

[90] 17 CFR 240.15c3–1(e)(3).

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *See* Exchange Act Release No. 28927 (February 28, 1991), 56 FR 9124 (March 5, 1991).

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *See* Exchange Act Release No. 52606 (October 13, 2005).

[100] *See id.*

[101] *Id.*

[102] 17 CFR 240.15c3–1a.

[103] 17 CFR 240.15c3–1(c)(2)(x).

[104] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997). Under Appendix A to Rule 15c3–1, a broker-dealer calculating net capital charges for its options portfolios shocks the products in each portfolio (grouped by underlying instrument) at ten equidistant points along a potential market move range. The market move ranges for major market foreign currencies, high-capitalization diversified indexes, and non-high-capitalization diversified indexes are, respectively: +(−) 6%, +(−) 10% and +(−) 15%. The temporary rule lowered these market move ranges to respectively: +(−) 4½%, + 6% (−) 8% and +(−) 10% in terms of calculating haircuts for positions of non-clearing options specialists and market makers. *See id.*

[105] 17 CFR 240.15c3–1a(b)(1)(iv)(B).

conditions involving high levels of market volatility.

The relief expired two years from its effective date. The Commission staff subsequently issued a no-action letter on January 13, 2000 continuing the relief.[106] Since the no-action letter was issued, there have been periods of significant volatility in the securities markets, including the markets for major market foreign currencies and high-capitalization and non-high-capitalization diversified indexes. These periods of volatility include the Russian debt crisis in 1998, the internet bubble and the September 11, 2001 terrorist attacks. Despite periods of substantial volatility, there have been no significant increases in the number of deficits in non-clearing option specialist and market-maker accounts, nor did the lower capital charges under paragraph (b)(1)(iv) result in excessive leverage. Consequently, we are proposing to amend paragraph (b)(1)(iv) of Appendix A to Rule 15c3–1 to make permanent the previously granted relief. We believe permitting the lower requirement with respect to these types of positions carried in non-clearing option specialist and market-maker accounts better aligns the capital requirements in Rule 15c3–1 with the risks associated with these positions and accounts.

We request comment on all aspects of this proposed amendment, including whether the lower market move ranges for positions held by non-clearing options specialists and market makers are appropriate and whether data or other information suggests that these lower ranges did result in an increase in the number of deficits in non-clearing option specialist and market-maker accounts or in excessive leverage on the part of these firms. Commenters are encouraged to provide data to support their views.

ii. Money Market Funds

We are proposing an amendment that would reduce the ''haircut'' broker-dealers apply under Rule 15c3–1 for money market funds from 2% to 1% when computing net capital. In 1982, the Commission adopted a 2% haircut requirement for redeemable securities of an investment company registered under the Investment Company Act of 1940 that holds assets consisting exclusively of cash or money market instruments and which is known as a ''money market fund.''[107] The 2% haircut was adopted before the Commission adopted certain amendments to Rule 2a–7 under the Investment Company Act of 1940 (17 CFR 270.2a–7) that strengthened the risk limiting investment restrictions for money market funds.[108] Rule 2a–7 defines a money market fund generally as an investment company limited to investing in U.S. dollar denominated securities that present minimal credit risks and that are, at the time of acquisition, ''eligible securities.''[109] In particular, the rule requires that the securities purchased by a money market fund be short-term instruments of issuers that are deemed a low credit risk.[110] The rule also requires the fund to diversify its portfolio of securities.[111] Based on the enhancements to Rule 2a–7, as well as the historical stability of money market funds as investments, we are proposing to amend paragraph (c)(2)(vi)(D)(*1*) of Rule 15c3–1 to reduce the haircut on such funds from 2% to 1%. This amendment is designed to better align the net capital charge with the risk associated with holding a money market fund. A further amendment would clarify that a money market fund, for the purposes of paragraph (c)(2)(vi)(D)(*1*), is a fund described in Rule 2a–7.

We request comment on all aspects of this amendment, including on whether it is appropriate to reduce the haircut to 1% and, alternatively, whether the haircut for certain types of money market funds should be reduced to 0% as suggested by Federated in its petition to the Commission.[112] Commenters are encouraged to provide data to support their views.

F. Technical Amendments

Finally, we are proposing a number of technical amendments to these rules in order to, for example, update or correct citations to other regulations. These technical amendments include proposed amendments to the definitions of ''fully paid securities,'' ''margin securities,'' and ''bank'' in Rule 15c3–3.[113] Our proposed amendments are not intended to substantively change the meanings of these defined terms but, rather, to remove text that is superfluous or redundant. Consequently, we specifically seek comment on whether our proposed amendments to these definitions would substantively alter the meaning of ''fully paid securities,'' ''margin securities,'' and ''bank'' as those terms are defined in Rule 15c3–3. Commenters should describe how the amendment would result in a substantive change.

III. Further Requests for Comment

A. In General

We invite interested persons to submit written comments on any aspect of the proposed amendments, in addition to the specific requests for comments. Further, we invite comment on other matters that might have an effect on the proposals contained in the release, including any competitive impact.

B. Requests for Comment on Certain Specific Matters

1. Early Warning Levels

The Capital Committee of the Securities Industry Association (''SIA'') has proposed lowering the Rule 17a–11 early warning level for broker-dealers that carry over $10 billion in debits. Currently, under Rule 17a–11, a broker-dealer that computes its net capital requirement using the alternative standard must provide regulators with notice if their net capital level falls below 5% of aggregate debit items. The SIA contends that a broker-dealer with aggregate debit items exceeding $10 billion would not be approaching financial difficulty simply because its net capital falls to the 5% early warning threshold. The broker-dealer, because of the large amount of debits and corresponding capital requirement, would continue to hold sufficient net capital in the SIA's estimation. The SIA has suggested using a tiered approach in which the early warning level would be calculated by adding: (5% of the first $10 billion in debits) + (4% of the next $5 billion) + (3% of the next $5 billion) + (2.5% of all remaining debits).

We request comment on this proposal and note that the SROs would need to alter their early warning levels as well to make any such proposed amendment effective.

2. Harmonize Securities Lending and Repo Capital Charges

We also are considering whether to harmonize the net capital deductions required under paragraph (c)(2)(iv)(B) of Rule 15c3–1 for securities lending and

[106] Letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Richard Lewandowski, Vice President, Regulatory Division, The Chicago Board Options Exchange, Inc. (Jan. 13, 2000).

[107] Exchange Act Release No. 18737 (May 13, 1982), 47 FR 21759 (May 20, 1982). *See* 17 CFR 240.15c3–1(c)(2)(vi)(D)(*1*).

[108] Investment Company Act Release No. 18005 (February 20, 1991), 56 FR 8113 (February 27, 1991).

[109] 17 CFR 270.2a–7.

[110] *See id.*

[111] *Id.*

[112] *See* Public Petition for Rulemaking No. 4–478 (April 3, 2003), as amended (April 4, 2005), available at *http://www.sec.gov/rules/petitions/petn4–478.htm.*

[113] 17 CFR 240.15c3–3(a)(3), (4), and (7) respectively.

borrowing transactions with the deductions required under paragraph (c)(2)(iv)(F) for securities repo transactions. Securities lending and borrowing transactions are economically similar to repo transactions. However, the need to take a deduction (or the size of the deduction) under Rule 15c3–1 may depend on whether the broker-dealer executes the transaction as a securities loan/borrow or repo transaction.[114] We are concerned that this has created an opportunity for regulatory arbitrage.

In order to eliminate this mismatch, we could make identical the securities loaned and repurchase agreement deductions and, similarly, the securities borrowed and reverse repurchase agreement deductions. We seek comment on the feasibility of such a proposal and on how it should be implemented.

3. Accounting for Third-Party Liens on Customer Securities Held at a Broker-Dealer

Under Rule 15c3–3, a broker-dealer is required to include as a ''credit'' item in the customer reserve formula the amount of any loan it receives that is collateralized by securities carried for the accounts of customers.[115] The credit item is intended to ensure that funds obtained through the use of customer securities are deployed to support customer transactions (*e.g.*, to make margin loans) and not used in the broker-dealer's proprietary business.

In some cases, the customer's securities may be subject to a lien arising from a third-party loan that is not made to the broker-dealer (*e.g.*, the loan is made directly to the customer). If the customer's securities are not moved to a pledge account in the name of the third-party lender, then the broker-dealer will continue to hold them in the name of the customer. As between the broker-dealer and the customer, the securities may be fully paid for and, consequently, subject to the physical possession or control requirement of Rule 15c3–3. Moreover, if the broker-dealer became insolvent and was liquidated in a SIPA proceeding, the trustee could be placed in the situation of owing the securities both to the customer and to the third-party holding the lien. This could increase the costs of a SIPA liquidation, which is underwritten by the fund administered by SIPC.

The situation becomes even more complicated when the securities are subject to liens held by multiple creditors. The amount of the obligation to each creditor may change daily depending on market movements or other factors. In a SIPA proceeding, this could increase the number of parties with potentially competing claims for the securities, and thereby increase the complexity and costs of the liquidation.

For these reasons, we request comment on how third-party liens against customer fully paid securities carried by a broker-dealer should be treated under the financial responsibility rules, including Rule 15c3–3, Rule 17a–3 and Rule 17a–4. For example, should the broker-dealer be required to: (1) Include the amount of the customer's obligation to the third-party as a credit item in the reserve formula; (2) move the securities subject to the lien into a separate pledge account in the name of the pledgee or pledges; or (3) record on its books and records and disclose to the customer the existence of the lien, identity of the pledgee(s), obligation of the customer, and amount of securities subject to the lien?

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). We have submitted the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[116] 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 control number. The rules being amended—Rule 15c3–1, Rule 15c3–3, Rule 17a–3, Rule 17a–4 and Rule 17a–11—contain currently approved collections of information under, respectively, OMB control numbers 3235–0200, 3235–0078, 3235–0033, 3235–0279 and 3235–0085.

A. Collections of Information Under the Proposed Amendments

The proposed rule amendments contain recordkeeping and disclosure requirements that are subject to the PRA. In summary, the amendments would require a broker-dealer, under certain circumstances, to (1) disclose the principals and obtain certain agreements from the principals in a securities lending transaction where it performs settlement services if it wants to be considered an agent (as opposed to a principal) for the purposes of the net capital rule,[117] (2) obtain written permission from broker-dealer (''PAB'') account holders to use their fully paid and excess margin securities,[118] (3) perform a PAB reserve computation,[119] (4) obtain written notification from a bank holding its PAB Special Reserve Account that the bank has received notice that the assets in the account are being held for the benefit of PAB account holders,[120] (5) enter into a written contract with a bank holding its PAB Special Reserve Accounts in which the bank agrees the assets in the account would not be used as security for a loan to the broker-dealer and would not be subject to a right, charge, security interest, lien, or claim of any kind in favor of the bank,[121] (6) obtain the affirmative consent of a customer before changing the terms under which the customer's free credit balances are invested,[122] (7) make and maintain records documenting internal controls to assist the broker-dealer in analyzing and managing market, risks arising from business activities,[123] (8) provide notice to the Commission and other regulatory authorities if the broker-dealer becomes insolvent,[124] and (9) provide notice to the Commission and other regulatory authorities if the broker-dealer's securities borrowed and loan or securities repurchase/reverse repurchase activity reaches a certain threshold or, alternatively, provide regulatory authorities with a monthly report of the broker-dealer's securities borrowed and loan or securities repurchase/reverse repurchase activity.[125]

[114] Specifically, with respect to repurchase agreement and securities borrowed transactions, the required deductions are triggered only when the deficits exceed certain percentages. *See* 17 CFR 240.15c3–1(c)(2)(iv)(B) and (F). Conversely, with reverse repurchase agreement and securities loaned transactions, the deductions are triggered without regard to the size of the deficit.

[115] 17 CFR 240.15c3–3a, Item 2. A broker-dealer may finance margin loans to its customers by obtaining a bank loan that is secured by the customers' securities, which—because they are not ''excess margin securities''—do not have to be in the control of the broker-dealer under Rule 15c3–3(b).

[116] 44 U.S.C. 3507(d); 5 CFR 1320.11

[117] Proposed amendment revising paragraph (c)(2)(iv)(B) of Rule 15c3–1.

[118] Proposed amendment adding paragraph (b)(5) to Rule 15c3–3.

[119] Proposed amendment revising paragraph (e)(1) of Rule 15c3–3.

[120] Proposed amendment revising paragraph (f) of Rule 15c3–3.

[121] *Id.*

[122] Proposed amendment adding paragraph (j) to Rule 15c3–3.

[123] Proposed amendments adding paragraph (a)(24) to Rule 17a–3 and revising paragraph (e)(9) of Rule 17a–4.

[124] Proposed amendment revising paragraph (b)(1) of Rule 17a–11.

[125] Proposed amendment adding paragraph (c)(5) to Rule 17a–11.

B. Proposed Use of Information

The Commission and other regulatory authorities would use the information collected under the proposed amendment to Rule 15c3–1 and Rule 15c3–3 to determine whether the broker-dealer is in compliance with each rule. In particular, the record with respect to acting as agent in a securities loan transaction would assist examiners in verifying that the broker-dealer is properly accounting for securities loan deficits under Rule 15c3–1. The records with respect to the PAB accounts would assist examiners in verifying that the PAB accountholders had agreed to permit the broker-dealer to use their securities, the broker-dealer had performed the PAB reserve computation and the bank holding the PAB Special Reserve Account had agreed to do so free of lien.

The Commission and other regulatory authorities would use the information collected under the proposed amendments to Rules 17a–3 and 17a–4 to determine whether the broker-dealer is operating in a manner that mitigates the risk it will fail as a result of failing to document internal controls.

The Commission and other regulatory authorities would use the information collected under the proposed amendments to Rule 17a–11 to identify a broker-dealer experiencing financial difficulty. This information would assist the Commission and other regulators in promptly taking appropriate steps to protect customers, creditors, and counterparties. In particular, a notice of insolvency would assist regulators in responding more quickly to a failing institution. The notices and reports with respect to securities lending and repos would assist regulators in identifying broker-dealers that are active in these transactions or suddenly take on large positions. This would assist in monitoring the systemic risk in the markets.

C. Respondents

The amendment to Rule 15c3–1 requiring a broker-dealer to make disclosures to, and obtain certain agreements from, securities lending principals only would apply to those firms that participate in the settlement of securities lending transactions as agents. We estimate that approximately 170 broker-dealers would be affected by this requirement.[126]

The amendments to Rule 15c3–3 requiring a broker-dealer to perform a PAB reserve computation and to obtain certain agreements and notices related to its PAB accounts only would affect those firms that carry such accounts. We estimate that approximately 75 broker-dealers would carry such accounts.[127]

The amendment to Rule 15c3–3 requiring a broker-dealer to obtain the affirmative consent of a customer before changing the terms under which the customer's free credit balances are maintained only would apply to firms that carry free credit balances for customers. We estimate that approximately 256 broker-dealers carry customer accounts.[128]

The amendments to Rules 17a–3 and 17a–4 requiring a broker-dealer to make and maintain records documenting internal controls for analyzing and managing risks only would apply to firms that have more than $1,000,000 in aggregate credit items, or $20,000,000 in capital. Thus, its impact would be limited to the largest broker-dealers. Generally, the broker-dealers that would be required to document internal controls are exposed to all the risks identified in the proposed amendment. Accordingly, the number of respondents would equal the number of broker-dealers meeting the thresholds set forth in the amendment. We estimate that approximately 517 broker-dealers would meet at least one of these thresholds.[129]

The amendment to Rule 17a–11 would require a broker-dealer to provide the Commission with notice if it becomes subject to certain insolvency events only would affect a limited number of firms per year. We estimate that approximately six broker-dealers would become subject to one of these events in a given year.[130]

The amendment to Rule 17a–11 would require a broker-dealer to provide notice to the Commission if its securities borrowed or loan or securities repurchase or reverse repurchase activity reaches a certain threshold or, alternatively, provide monthly reports to securities regulators about such activities only would affect a limited number of firms per year. We estimate that approximately 11 broker-dealers would provide the notice and that 21 broker-dealers would opt to send the monthly reports in a given year.[131]

D. Total Annual Reporting and Recordkeeping Burden

As discussed in further detail below, we estimate the total recordkeeping burden resulting from these amendments would be approximately 373,938 annual hours,[132] 105,900 one-time hours,[133] and a one-time cost of $1,000,000 arising from the retention of outside counsel.

1. Securities Lending Agreements and Disclosures

The proposed amendment to Rule 15c3–1 would require a broker-dealer to make disclosures to, and obtain certain agreements from, securities lending principals in situations where the firm participates in the settlement of a securities lending transaction but wants to be deemed an agent for purposes of Rule 15c3–1. We understand that most existing standard securities lending master agreements in use today already contain language requiring agent lenders to disclose principals and principals to agree not to hold the agents liable for a counterparty default and, consequently, the proposed amendment would be codifying industry practice. Thus, the standard agreement used by the vast majority of broker-dealers should contain the representations and disclosures required by the proposed amendment. However, a small percentage of broker-dealers may need to modify their standard agreements.

We estimate that 5% of the approximately 170 firms engaged in this business, or 9 firms, would not have used the standard agreements. We further estimate each of these firms would spend approximately 20 hours of employee resources updating their standard agreement template. Therefore, we estimate that the total one-time burden to the industry as a result of this proposed requirement would be approximately 180 hours.[134] We do not believe firms would incur costs arising from updating systems, purchasing software, or engaging outside counsel in meeting this proposed requirement but seek comment on that estimate.

2. PAB Customer Reserve Account Recordkeeping Requirements

This proposed amendment to Rule 15c3–3 would require a broker-dealer to perform a PAB reserve computation and obtain certain agreements and notices related to PAB accounts and, therefore,

[126] This estimate is derived from FOCUS Reports filed by broker-dealers pursuant to Section 17 of the Exchange Act and Rule 17a–5 (17 CFR 240.17a–5).

[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] This estimate is based on the Annual Report of the Securities Investor Protection Corporation (''SIPC''), which indicates that in recent years an average of six customer protection proceedings per year have been initiated with respect to SIPC members. A copy of the 2005 Annual Report can be obtained at: *http://www.sipc.org/pdf/2005AnnualReport.pdf.*

[131] These estimates are derived from information filed by broker-dealers in FOCUS Report filings.

[132] 9,350 hours + 364,333 hours + 255 hours = 373,938 hours.

[133] 180 hours + 26,830 hours + 2,250 hours + 10,000 hours + 2,500 hours + 62,040 hours + 2,100 hours = 105,900 hours.

[134] 9 broker-dealers × 20 hours per firm = 180 hours.

would impose recordkeeping burdens on a broker-dealer to the extent it: (1) Has to perform a PAB computation; (2) chooses to use PAB securities and, therefore, needs to obtain agreements from PAB accountholders; and (3) opens a PAB reserve account at a new bank. The customer agreement requirement would be a one-time burden. It is standard for a broker-dealer to enter into a written agreement with an accountholder concerning the terms and conditions under which the account would be maintained. Therefore, requiring a written agreement would not result in additional burden. Rather, additional burdens would arise from the need to amend existing agreements and the standard agreement template that would be used for future customers.

Based on FOCUS Report filings, we estimate that there are approximately 2,533 existing PAB customers and, therefore, broker-dealers would have to amend approximately 2,533 existing PAB agreements. We further estimate that, on average, a firm would spend approximately 10 hours of employee resources amending each agreement. We also estimate, based on FOCUS Reports, that approximately 75 broker-dealers carry PAB accounts and, therefore, these 75 firms would have to amend their standard PAB agreement template. We estimate a firm would spend, on average, approximately 20 hours of employee resources on this task. Therefore, we estimate the total one-time burden to the industry from these requirements would be approximately 26,830 total hours.[135] We do not believe firms would incur costs arising from updating systems, purchasing software, or engaging outside counsel in meeting these proposed requirements but seek comment on that estimate.

The proposed requirements to perform a PAB computation and obtain agreements and notices from banks holding PAB accounts would result in annual burdens based on the number of broker-dealers that hold PAB accounts and the number of times per year these broker-dealers open new PAB bank accounts. Currently, to obtain the relief provided in the PAIB Letter, broker-dealers are required to obtain the agreements and notices from the banks. We understand that broker-dealers generally already obtain these agreements and notices. Therefore, we estimate there would be no additional burden imposed by this requirement but seek comment on this estimate.

The proposed amendment requiring a PAB computation would produce a one-time burden. Based on FOCUS Report filings, we estimate that approximately 75 broker-dealers would perform a PAB computation. These firms already perform a reserve computation for domestic broker-dealer customers under the PAIB letter. Nonetheless, we estimate these firms would spend, on average, approximately 30 hours of employee resources per firm updating their systems to implement changes that would be necessitated by our proposed amendment. Therefore, we estimate that the total one-time burden to the industry arising from this proposed requirement would be approximately 2,250 hours.[136]

The proposed amendment requiring a PAB computation also would produce an annual burden. Based on FOCUS Report filings, we estimate that approximately 71 broker-dealers would perform the PAB computation on a weekly basis and four broker-dealers would perform it on a monthly basis. We further estimate that a broker-dealer would spend, on average, approximately 2.5 additional hours to complete the Rule 15c3–3 reserve computation as a result of our proposed amendment. Therefore, we estimate that the total annual burden to the industry from this proposed requirement would be approximately 9,350 hours.[137] We do not believe firms would incur costs arising from purchasing software or engaging outside counsel in meeting these proposed requirements but seek comment on that estimate.

3. Affirmative Consent

This proposed amendment to Rule 15c3–3 would require a broker-dealer to obtain the affirmative consent of a new customer before changing the terms under which the customer's free credit balances are treated and provide notice to existing customers prior to changing how their free credit balances are treated. The broker-dealer also would be required to make certain disclosures.

This proposed requirement would result in one-time and annual burdens to the broker-dealer industry. We note, however, that the requirement only would apply to a firm that carries customer free credit balances and opts to have the ability to change how its customers' free credit balances are treated.

Based on staff experience, we estimate that 50 broker-dealers would choose to provide existing and new customers with the disclosures and notices required under the proposed amendment in order to have the ability to change how their customers' free credit balances are treated. We further estimate these firms would spend, on average, approximately 200 hours of employee resources per firm updating their systems (including processes for generating customer account statements) to incorporate changes that would be necessitated by our proposed amendment. Therefore, we estimate that the total one-time burden to the industry arising from this proposed requirement would be approximately 10,000 hours.[138]

We also estimate that these firms would consult with outside counsel in making these systems changes, particularly with respect to the language in the disclosures and notices. The Commission estimates that, on average, an outside counsel would spend, on average, approximately 50 hours assisting a broker-dealer in updating its systems for a one-time aggregate burden to the industry of 2,500 hours.[139] The Commission further estimates that this work would be split between a partner and associate, with an associate performing a majority of the work. Therefore, the Commission estimates that the average hourly cost for an outside counsel would be approximately $400 per hour. For these reasons, the Commission estimates that the average one-time cost to a broker-dealer would be approximately $20,000[140] and the one-time cost to the industry would be approximately $1,000,000.[141]

As for annual burden, we estimate these proposed requirements would impact 5% of the total broker-dealer customer accounts per year. Based on FOCUS Report filings, we estimate there are approximately 109,300,000 customer accounts and, consequently, 5% of the accounts (5,465,000 accounts per year) would be impacted. We further estimate that a broker-dealer would spend, on average, four minutes of employee resources to process an affirmative consent for new customers and a disclosure for existing customers. Therefore, we estimate that the annual burden to the industry arising from the

[135] (2,533 PAB customers × 10 hours per customer) + (75 firms × 20 hours per firm) = 26,830 hours.

[136] 75 broker-dealers × 30 hours per firm = 2,250 hours.

[137] ([71 weekly filers] × [52 weeks] × [2.5 hours per computation]) + ([4 monthly filers] × [12 months] × [2.5 hours per computation]) = 9,350 total hours.

[138] 50 broker-dealers × 200 hours per firm = 2,250.

[139] 50 broker-dealers × 50 hours per firm = 2,500 hours.

[140] $400 per hour × 50 hours = $20,000.

[141] 50 broker-dealers × $20,000 = $1,000,000.

requirement would be approximately 364,333 hours.[142]

4. Internal Control Recordkeeping Requirements

These proposed amendments to Rules 17a–3 and 17a–4 would require certain large broker-dealers to make and maintain records documenting internal controls that assist in analyzing and managing risks. The requirement would apply to broker-dealers that have more than $1,000,000 in customer credits or $20,000,000 in capital. This requirement would result in a one-time burden to the industry.

Based on FOCUS Report filings, we estimate there are approximately 517 broker-dealers that meet the applicability threshold of this amendment ($1,000,000 in credits or $20,000,000 in capital). Based on staff experience, we estimate that these larger broker-dealers generally already have documented the procedures and controls they have established to manage the risks arising from their business activities. Moreover, among these firms, the time per firm likely would vary depending on the size and complexity of the firm. For some firms, the burden may be close to 0 hours and for others it may be hundreds of hours. Taking this into account, we estimate that a broker-dealer would spend, on average, approximately 120 hours of employee resources augmenting its documented procedures to come into compliance with this proposed amendment. Therefore, we estimate the total one-time burden to the industry would be approximately 62,040 hours.[143]

We do not believe broker-dealers would incur costs arising from updating systems, purchasing software, or engaging outside counsel in meeting this proposed requirement but seek comment on that estimate.

5. Notice Requirements

The proposed amendments to Rule 17a–11 would require a broker-dealer to provide notice to the Commission and other regulatory authorities if the broker-dealer becomes subject to certain insolvency events, and notice to the Commission and other regulatory authorities if the broker-dealer's securities borrowed and loan or securities repurchase/reverse repurchase activity reaches a certain threshold or, alternatively, provide regulatory authorities with a monthly report of the broker-dealer's securities borrowed and loan or securities repurchase/reverse repurchase activity.

The notice requirements would result in irregular filings from a small number of broker-dealers. As noted above, SIPC's 2005 annual report indicates that in recent years an average of six broker-dealers per year have become subject to a liquidation proceeding under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*) (''SIPA''). Accordingly, we estimate that approximately six insolvency notices would be sent per year and that a broker-dealer would spend, on average, approximately ten minutes of employee resources to prepare and send the notice. Therefore, we estimate that the total annual burden to the industry arising from this proposal would be approximately one hour.[144] Based on FOCUS Report filings, we estimate that approximately twelve stock loan/borrow notices would be sent per year. We further estimate that a broker-dealer would spend, on average, approximately ten minutes of employee resources to prepare and send the notice. Therefore, we estimate that the total annual burden to the industry arising from this proposal would be approximately two hours.[145]

Based on FOCUS Report filings, we estimate that 21 broker-dealers per year would submit the monthly stock loan/borrow report. We estimate each firm would spend, on average, approximately 100 hours of employee resources updating its systems to generate the report. Therefore, we estimate that the total one-time burden to the industry arising from this proposed requirement would be approximately 2,100 hours.[146] As for annual burden, we estimate each firm would spend, on average, approximately one hour per month (or twelve hours per year) of employee resources to prepare and send the report. Therefore, we estimate the total annual burden arising from this proposal would be approximately 255 hours.[147]

We do not believe firms would incur costs arising from purchasing software or engaging outside counsel in meeting these proposed requirements but seek comment on this estimate.

E. Collection of Information Is Mandatory

These recordkeeping and notice requirements are mandatory with the exception of the option for a broker-dealer to provide a monthly notice of its securities lending activities to its designated examining authority in lieu of filing the notice required under the proposed amendment to Rule 17a–11.

F. Confidentiality

The information collected under the amendments to Rules 15c3–1, 15c3–3, 17a–3 and 17a–4 would be stored by the broker-dealers and made available to the various regulatory authorities as required in connection with examinations, investigations, and enforcement proceedings.

The information collected under the amendments to Rule 17a–11 would be generated from the internal records of the broker-dealers. It would be provided to the Commission and other regulatory agencies but not on a regular basis (except for the optional monthly reports). The information provided to the Commission would be kept confidential to the extent permitted by law.

G. Record Retention Period

The proposed amendment to Rule 15c3–1 would require broker-dealers to make disclosures to principals and obtain agreements from principals with respect to securities lending transactions where the broker-dealer acts as agent. These records would have to be maintained for at least three years under paragraph (b)(7) of Rule 17a–4.[148] The retention period for the agreements also would depend on the length of time the relationship between the broker-dealer and the principal lasts.

The proposed amendments to Rule 15c3–3 would require broker-dealers to obtain written permission from a PAB customer if they want to use the customer's fully paid and excess margin securities and to obtain the affirmative consent of customers with respect to changing the terms under which free credit balances are maintained. These agreements would relate to the terms and conditions of the maintenance of the customer's account and, accordingly, fall within the record retention requirements of paragraph (c) of Rule 17a–4.[149] Under this paragraph, the records must be retained until six years after the closing of the customer's account. The amendments to Rule 15c3–3 also would require broker-dealers to obtain notices and contracts from the banks holding their PAB customer reserve accounts. In order to comply with Rule 15c3–3, broker-dealers would need to have these notices and contracts in place and documented. Accordingly,

[142] 5,465,000 accounts × 4 minutes/account = 364,333 hours.

[143] 517 broker-dealers × 120 hours = 62,040 hours.

[144] 6 notices × 10 minutes per notice = 1 hour.

[145] 12 notices × 10 minutes per notice = 2 hours.

[146] 21 broker-dealers × 100 hours per firm = 2,100 hours.

[147] 21 broker-dealers × 12 hours per year or 252 hours.

[148] 17 CFR 240.17a–4(b)(7).

[149] 17 CFR 240.17a–4(c).

the retention period for these records is, at a minimum, equal to the life of the PAB customer reserve account for which they are obtained.

The proposed amendments to Rules 17a–3 and 17a–4 would require broker-dealers to document various internal control systems, policies and guidelines. The amendments to Rule 17a–4 include the establishment of a retention period for these records, which would be until three years after the termination of the use of such system, policy or guideline.

The proposed amendments to Rule 17a–11 would require broker-dealers to provide notice or monthly reports to the Commission and other regulatory authorities under certain circumstances. These notices and reports would constitute communications relating to a broker-dealer's ''business as such'' and, therefore, would need to be retained for three years.[150]

H. Request for Comment

We request comment on the proposed collections of information in order to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility, (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected, and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, and refer to File No. S7–08–07. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–08–07, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549.

V. Costs and Benefits of the Proposed Amendments

We are sensitive to the costs and benefits that result from Commission rules. We have identified certain costs and benefits of the proposed amendments and request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in the analysis.[151] We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in each section of this cost-benefit analysis, and request those commenters to provide data so we can improve these cost estimates.

We also seek estimates and views regarding these costs and benefits for particular types of market participants, as well as any other costs or benefits that may result from the adoption of these proposed rules.

A. Amendments to the Customer Protection Rule

1. Proprietary Accounts of Broker-Dealers

The proposed amendment to Rule 15c3–3 would require broker-dealers to perform a reserve calculation for the proprietary accounts (''PAB'') of domestic and foreign broker-dealers and foreign banks acting as broker-dealers. It also would require them to obtain agreements from these broker-dealer customers with respect to the use of their fully paid and excess margin securities. Finally, it would require broker-dealers to obtain agreements and notices from the banks holding the PAB reserve deposits.

As discussed above, there is a disparity between the customer reserve requirements in Rule 15c3–3 and the treatment of customers in a liquidation proceeding under the Securities Investor Protection Act of 1970 (''SIPA'').[152] Rule 15c3–3 requires broker-dealers to reserve the net amount of money they owe their customers. If the broker-dealer fails, this net amount is available to be returned to customers ahead of all other creditors. Moreover, if the failed broker-dealer is subject to a SIPA proceeding, this net amount becomes part of the estate of customer property, which is distributed *pro rata* to customers.

Foreign and domestic broker-dealers are not ''customers'' under Rule 15c3–3. Therefore, broker-dealers are not required to reserve the net amount of money owed to these entities. However, they are ''customers'' for the purposes of SIPA and, consequently, are entitled to a *pro rata* share of the estate of customer property. Thus, even if a failed broker-dealer properly reserved the net amount it owed its Rule 15c3–3 ''customers,'' the estate of customer property nonetheless may be insufficient to return the money owed to these ''customers'' because broader definition of ''customer'' in SIPA entitles foreign and domestic broker-dealers to a *pro rata* share of the funds.

i. Benefits

Our proposed amendment would address this discrepancy by requiring broker-dealers to reserve for the net amount of money they owe other broker-dealers. This would benefit the other customers as well as the broker-dealer account holders by eliminating the inconsistency between Rule 15c3–3 and SIPA, which could decrease the estate of customer property in a SIPA liquidation. It also would minimize the risk that advances from the fund administered by the Securities Investor Protection Corporation (''SIPC'') would be necessary to protect customer cash claims. We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

ii. Costs

The proposed requirements to perform a PAB computation and obtain agreements and notices from banks holding PAB accounts would result in one-time and annual costs to broker-dealers that hold PAB accounts. Under the no-action relief set forth in the PAIB Letter, these broker-dealers already are performing a reserve computation for

[150] 17 CFR 240.17a–4(b)(4).

[151] For the purposes of this cost/benefit analysis, we are using salaries for New York-based employees, which tend to be higher than the salaries for comparable positions located outside of New York. This conservative approach is intended to capture unforeseen costs and to account for the fact that a substantial portion of the work will be undertaken in New York. The salary information is derived from the *SIA Report on Management and Professional Earnings in the Securities Industry 2005* (''SIA Management Report 2005''). The hourly costs derived from the SIA Management Report 2005, and referenced in this cost benefit section, are modified to account for an 1800-hour work week and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[152] 15 U.S.C. 78aaa *et seq.*

domestic broker-dealer accounts and have obtained the necessary agreements and notices from the banks holding their PAIB reserve deposits. Therefore, the proposed amendments would result in incremental costs.

The proposed requirement to obtain written agreements from PAB customers in order to use their fully paid and excess margin securities would result in a one-time cost to the industry. As discussed above with respect to the Paper Work Reduction Act of 1995 (''PRA''), it is standard for broker-dealers to enter into written agreements with their broker-dealer customers concerning the terms and conditions under which the customers' accounts will be maintained. Therefore, requiring a written agreement should not result in additional costs. Rather, the one-time costs would arise from the need to amend existing agreements and the standard agreement template that would be used for future customers.

As discussed with respect to the PRA, based on FOCUS Report filings, we estimate that there are approximately 2,533 existing PAB customers and, therefore, broker-dealers would have to amend approximately 2,533 existing PAB agreements. We further estimate that, on average, a firm would spend approximately 10 hours of employee resources amending each agreement. We also estimate, based on FOCUS Reports, that approximately 75 broker-dealers carry PAB accounts and, therefore, these 75 firms would have to amend their standard PAB agreement template. We estimate a firm would spend, on average, approximately 20 hours of employee resources on this task. Therefore, as noted with respect to the PRA, we estimate the total one-time hourly burden to the industry from these requirements would be approximately 26,830 hours.[153] For the purposes of this cost analysis, we estimate this work would be undertaken by a broker-dealer's in-house attorneys. The SIA Management Report 2005 indicates that the average hourly cost of an attorney is $327. Therefore, we estimate that there would be a one-time cost to the industry from these proposed requirements of approximately $8,773,410.[154]

As discussed with respect to the PRA, the requirement to perform a PAB computation also would produce a one-time burden to the extent the system for performing the calculation would need to be updated. Based on FOCUS Report filings, we estimate that approximately 75 broker-dealers would perform a PAB computation. These firms already perform a reserve computation for domestic broker-dealer customers under the PAIB letter. Nonetheless, we estimate these firms would spend, on average, approximately 30 hours of employee resources per firm updating their systems to implement changes that would be necessitated by our proposed amendment. With respect to the PRA, we estimate that the total one-time hourly burden to the industry arising from this proposed requirement would be approximately 2,250 hours.[155] For the purposes of the cost analysis, we estimate that this work would be undertaken by a Senior Programmer. The SIA Management Report 2005 indicates the average hourly cost of this position is approximately $268. Therefore, we estimate that there would be a one-time cost to the industry from the proposed requirement of approximately $603,000.[156]

As noted with respect to the PRA, the proposed requirement to perform a PAB computation would result in an annual hourly burden to the extent the new requirement would lengthen the time needed to complete the computation. Based on FOCUS Report filings, we estimate that approximately 71 broker-dealers would perform the PAB computation on a weekly basis and four broker-dealers would perform it on a monthly basis. We further estimate that a broker-dealer would spend, on average, approximately 2.5 additional hours to complete the Rule 15c3–3 reserve computation as a result of our proposed amendment. Therefore, as noted with respect to the PRA, we estimate that the total annual hourly burden to the industry from this proposed requirement would be approximately 9,350 hours.[157] For purposes of this cost analysis, we estimate that the responsibility for performing the PAB computation would be undertaken by a financial reporting manager. As noted above, the SIA Management Report 2005 indicates that the average hourly cost for a financial reporting manager is $278. Therefore, we estimate that the total annual cost to the industry resulting from these requirements would be approximately $2,599,300.[158]

As noted above, we request comment on these proposed cost estimates. In particular, we request comment on whether there would be additional costs to broker-dealers as a consequence of these proposals. For example, with respect to the PRA, we estimate that these requirements would not result in costs arising from purchasing software or engaging outside counsel. Therefore, we request comment on whether these requirements would result in such costs and, if so, how to quantify the costs. We also request comment on whether these proposals would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

2. Banks Where Special Reserve Deposits May Be Held

The proposed amendment to Rule 15c3–3 would limit the amount of cash a broker-dealer could deposit at any one bank for the purposes of maintaining a required customer or PAB reserve requirement and exclude customer and PAB reserve cash deposits at affiliated banks from counting towards the broker-dealer's reserve requirement.

i. Benefits

The intent of this proposed amendment is to prevent broker-dealers from concentrating customer related deposits that are large relative to the broker-dealer or the bank in order to limit the risk arising from a financial collapse and to prevent such deposits from being lost in a group-wide financial collapse. Concentration poses a risk that some or all of the deposit may be lost. Depending on the size of the deposit and the broker-dealer, a lost deposit could cause the broker-dealer to fail. If the broker-dealer fails and the deposit is not recovered, the SIPC fund likely would not recover advances from the fund made for the purpose of returning customer assets. Moreover, to the extent that customer losses exceeded the SIPA advance limits, customers would suffer permanent losses. The benefits that would be derived from this proposed amendment are an increased safeguarding of SIPC funds and customer assets.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

[153] (2,533 PAB customers × 10 hours per customer) + (75 broker-dealers × 20 hours per firm) = 26,830 hours.

[154] $327 per hour × 26,830 hours = $8,773,410.

[155] 75 broker-dealers × 30 hours per firm = 2,250 hours.

[156] $268 per hour × 2,250 hours = $603,000.

[157] ([71 weekly filers] × [52 weeks] × [2.5 hours per computation]) + ([4 monthly filers] × [12 months] × [2.5 hours per computation]) = 9,350 total hours.

[158] $278 per hour × 9,350 hours = $2,599,300.

ii. Costs

We estimate that the costs resulting from this proposed amendment would be incremental. Specifically, we estimate that approximately 216 broker-dealers would have reserve deposit requirements.[159] A majority of these firms meet a substantial portion of their deposit requirement using qualified government securities as opposed to cash and, therefore, would not be impacted by this proposal. Moreover, to the extent that a broker-dealer's cash deposits exceed the limits, it could open up one or more accounts at different banks or, alternatively, use qualified securities to meet part of its deposit requirement.

In terms of quantifying costs, we estimate that, of the 216 firms with reserve deposit requirements, only 5%, namely 11, would need to open new bank accounts or substitute qualified securities for cash in an existing reserve account. We estimate that the responsibility for opening a new reserve bank account or substituting qualified securities for cash in an existing account would be undertaken by a Senior Treasury/Cash Management Manager. The SIA Management Report 2005 indicates that the average hourly cost of this position is $263. We estimate that the senior treasury/cash management manager would spend approximately 10 hours performing these changes. Therefore, we estimate that the average cost per firm to make these changes would be approximately $2,630.[160] For these reasons, we estimate that the total one-time cost to the industry would be approximately $28,930.[161]

As noted above, we request comment on these proposed cost estimates. In particular, we request comment on whether there would be additional costs to broker-dealers as a consequence of these proposals, such as costs arising from implementing systems changes, maintaining additional bank or securities accounts, and managing pools of qualified securities as opposed to a deposit of cash. We also request comment on whether these proposals would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their cost estimates.

[159] This estimate is based on FOCUS Report filings.

[160] $263 per hour × 10 hours = $2,630.

[161] 11 broker-dealers × $2,630 = $28,930.

3. Expansion of the Definition of Qualified Securities To Include Certain Money Market Funds

The proposed amendment to Rule 15c3–3 would permit broker-dealers to deposit certain money market funds in the customer reserve account. This would benefit broker-dealers subject to the customer reserve requirements in Rule 15c3–3 by creating a deposit alternative to cash and United States Treasury securities. It would not result in any additional costs to broker-dealers.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

In addition, while we do not believe the proposal would result in costs to broker-dealers, we request comment on whether it would result in costs to other market participants, including broker-dealer customers, and banks. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

4. Allocation of Customers' Fully Paid and Excess Margin Securities to Short Positions

The proposed amendment to Rule 15c3–3 would require broker-dealers to obtain possession or control over fully paid or excess margin securities that allocate to a proprietary or customer short position.

i. Benefits

This proposed amendment would protect broker-dealer customers by requiring broker-dealers to reduce long customer positions to possession and control even if the positions may allocate to a customer or proprietary short position. The possession or control requirement seeks to ensure that customer securities are available to be returned in the event the broker-dealer fails. Therefore, in addition to broker-dealer customers, the proposal would benefit the SIPC fund to the extent it mitigates outlays from the fund to make advances to customers of a failed broker-dealer that cannot return all customer securities.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

ii. Costs

We estimate this proposed requirement would result in a one-time cost to firms that carry customer securities to update systems for complying with the possession and control requirements in Rule 15c3–3. Based on FOCUS Report filings, we estimate that approximately 350 broker-dealers carry customer securities. We further estimate these firms would spend, on average, approximately 40 hours of employee resources per firm updating their systems to implement changes that would be necessitated by our proposed amendment. For the purposes of this cost analysis, we estimate that this work would be undertaken by a Senior Programmer. The SIA Management Report 2005 indicates the average hourly cost of this position is approximately $268. Therefore, we estimate that the average cost per firm to make these changes would be approximately $10,720.[162] For these reasons, we estimate that the total one-time cost to the industry would be approximately $3,752,000.[163]

We believe the annual costs resulting from this amendment would be *de minimis*. The proposal could result in some broker-dealers borrowing securities to cover proprietary short positions rather than using customer securities. However, currently when broker-dealers use customer securities they are required to put a credit in the Rule 15c3–3 reserve formula equal to the value of the securities. This credit item can result in higher reserve deposit requirements, which must be made using the broker-dealer's own capital. Thus, increased costs associated with having to borrow securities to cover a short position likely would be offset by decreased costs associated with devoting capital to customer reserve requirements.

As noted above, we request comment on these cost estimates. In particular, we request comment on whether there would be additional costs to broker-dealers as a consequence of these proposals. We also request comment on whether these proposals would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

5. Requirement To Obtain Customers' Affirmative Consent

This proposed amendment to Rule 15c3–3 would require a broker-dealer to obtain the affirmative consent of a new

[162] $268 per hour × 40 hours = $10,720.

[163] 350 broker-dealers × $10,720 = $3,752,000.

customer in order to be able to change the terms under which the customer's free credit balances are treated and provide notice to existing customers prior to changing how their free credit balances are treated. The broker-dealer also would be required to make certain disclosures.

i. Benefits

Free credit balances constitute money that a broker-dealer owes its customers. Customers may maintain these balances at the broker-dealer in anticipation of future stock purchases. Generally, customer account agreements set forth how the broker-dealer will invest these balances. For example, the broker-dealer may sweep them into a money market fund or, alternatively, pay an amount of interest on the funds. This proposed amendment is designed to ensure that customers are provided meaningful notice if a broker-dealer seeks to change the terms under which their free credit balances are invested. This would provide the customers with an opportunity to opt out of the proposed change or re-direct their free credit balances.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

ii. Costs

As discussed above with respect to the PRA, based on staff experience, we estimate that 50 broker-dealers would choose to provide existing and new customers with the disclosures and notices required under the proposed amendment in order to have the flexibility to change how their customers' free credit balances are treated. We further estimate these firms would spend, on average, approximately 200 hours of employee resources per firm updating their systems (including processes for generating customer account statements) to incorporate changes that would be necessitated by our proposed amendment. For the purposes of this cost analysis, we estimate that this work would be undertaken by a Senior Programmer. The SIA Management Report 2005 indicates the average hourly cost of this position is approximately $268. Therefore, we estimate that the average cost per firm to make these changes would be approximately $53,600.[164] For these reasons, we estimate that the total one-time cost to the industry would be approximately $2,680,000.[165]

Also, as discussed above with respect to the PRA, we estimate that these firms would consult with outside counsel in making these systems changes, particularly with respect to the language in the disclosures and notices. The Commission estimates that, on average, an outside counsel would spend approximately 50 hours assisting a broker-dealer in updating its systems for a one-time aggregate burden to the industry of 2,500 hours.[166] The Commission further estimates that this work would be split between a partner and associate, with an associate performing a majority of the work. Therefore, the Commission estimates that the average hourly cost for an outside counsel would be approximately $400 per hour. For these reasons, the Commission estimates that the average one-time cost to a broker-dealer for engaging outside counsel would be approximately $20,000[167] and the one-time cost to the industry would be approximately $1,000,000.[168]

As for annual burden, as discussed above with respect to the PRA, we estimate that this requirement would impact approximately 5,465,000 customer accounts in a given year. We further estimate that a broker-dealer would spend, on average, four minutes of employee resources to process an affirmative consent for new customers and a disclosure for existing customers. For the purposes of this cost analysis, we estimate that the responsibility for processing the affirmative consents would be undertaken by a compliance clerk. The SIA *Report on Office Salaries in the Securities Industry 2005* (''SIA Report on Office Salaries'') indicates that the average hourly cost of this position is $68. Additionally, we estimate the compliance clerk would spend approximately four minutes per consent and notice. Therefore, we estimate that the cost per account to process the affirmative consents and notices would be approximately $4.50.[169] Therefore, the total annual cost to the industry would be approximately $24.5 million.[170]

As noted above, we request comment on these proposed cost estimates. In particular, we request comment on whether there would be additional costs to broker-dealers as a consequence of these proposals. We also request comment on whether these proposals would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

6. Eliminating the 3% Reduction for Aggregate Debit Items

The proposed amendment to paragraph (a)(1)(ii)(A) of Rule 15c3–1 would eliminate the requirement that broker-dealers using the alternative standard reduce their Exhibit A—Item 10 debits by 3% in lieu of the 1% reduction applicable to basic method firms. This would benefit broker-dealers subject to the 3% reduction by potentially reducing the amount of their reserve deposit requirements and, thereby, freeing up capital. Based on FOCUS data, we estimate that broker-dealers in the aggregate currently carry approximately $550 billion in total credits and $380 billion in total debits. Moreover, we further estimate that the amount of credits and debits held by firms that are subject to the 1% reduction is insignificant and, consequently, for purposes of this cost analysis, assume that the $550 billion in credits and $380 billion in debits are held by firms subject to the 3% reduction.

Under the current requirement to reduce total debits by 3%, broker-dealers, in the aggregate, reduce the approximately $380 billion in total debits by $11.4 billion.[171] This decreases the amount of debits that can offset total credits from $380 billion to $368.6 billion. Based on our estimates, this potentially increases the industry-wide reserve requirement from approximately $170 billion[172] to $181.4 billion.[173] Under the proposed 1% reduction, broker-dealers, in the aggregate, would reduce the approximately $380 billion in total debits by $3.8 billion.[174] This would decrease the amount of debits that can offset credits from $380 billion to $376.2 billion. Based on our estimates, this would potentially increase the industry-wide reserve requirement from $170 billion[175] to $173.8 billion (as opposed to $181.4 billion).[176] Accordingly, our proposed amendment would result in a decrease in the industry-wide reserve requirement of approximately $7.6

[164] $268 per hour × 200 hours = $53,600.

[165] 50 broker-dealers × $53,600 = $2,680,000.

[166] 50 broker-dealers × 50 hours per firm = 2,500 hours.

[167] $400 per hour × 50 hours = $20,000.

[168] 50 broker-dealers × $20,000 = $1,000,000.

[169] 4 minutes × $68 per hour = $4.50.

[170] 5,465,000 consents/notices × $4.50 per consent/notice = $24,592,500.

[171] $380 billion × 0.03% = $11.4 billion.

[172] $550 billion − $380 billion = $170 billion.

[173] $550 billion − $368.6 billion = $181.4 billion.

[174] $380 billion × 0.01% = $3.8 billion.

[175] $550 billion − $380 billion = $170 billion.

[176] $550 billion − $376.2 billion = $173.8 billion

billion, which broker-dealers could redirect to other business activities.[177]

We do not anticipate any net costs to broker-dealers that would result from the proposed amendment, given that the benefits from the freed-up capital of potentially $7.6 billion would significantly offset any costs arising from making necessary systems changes to implement this proposed change to the customer reserve computation. However, it could result in costs to other market participants. Therefore, we request comment on whether it would result in such costs, including costs to broker-dealer customers and banks. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

7. Clarification Regarding Funds in Certain Commodity Accounts

The proposed amendment to paragraph (a)(8) of Rule 15c3–3 would clarify that broker-dealers need not treat funds in certain commodities accounts as ''free credit balances'' for purposes of the customer reserve formula. This would benefit broker-dealers that are registered as futures commission merchants by eliminating any ambiguity with respect to such accounts and avoiding situations where they unnecessarily increase reserve amounts. We do not anticipate the proposed amendment would result in any costs to broker-dealers and, as these funds are not protected under SIPA, would not expose the SIPC fund to increased liabilities.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

In addition, while we do not believe the proposal would result in costs to broker-dealers, we request comment on whether it would result in costs to other market participants, including broker-dealer customers, and banks. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

B. Portfolio Margining

There are two proposed amendments to accommodate SRO rules that permit broker-dealers to determine customer margin requirements using a portfolio-margining methodology. The first amendment would revise the definition of ''free credit balances'' in paragraph (a)(8) of Rule 15c3–3. The revision would expand the definition to include funds in a portfolio margin account relating to certain futures and futures options positions and the market value of futures options as of the filing date in a SIPA proceeding. The second amendment would add a debit line item to the customer reserve formula in Rule 15c3–3a consisting of margin posted by a broker-dealer to a futures clearing agency.

1. Benefits

The proposed amendments are designed to provide greater protection to customers with portfolio margin accounts. They would require broker-dealers to treat all cash balances in the accounts under the reserve computation provisions of Rule 15c3–3, which are designed to ensure that customer cash is available to be returned to customers in the event the broker-dealer fails. The proposed amendments also are designed to provide the protections of SIPA to these cash balances and to futures options in the accounts.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify, including the identification of sources of empirical data that could be used for such metrics.

2. Costs

The requirements imposed by the proposed amendments would be elective. They only would apply to broker-dealers choosing to offer their customers portfolio margin accounts with a cross-margin feature (*i.e.*, the ability to hold futures and futures options in the account). We estimate that approximately thirty-three broker-dealers would elect to offer their customers portfolio margin accounts that would include futures and futures options.[178]

The proposed amendment to the definition of ''free credit balances'' in Rule 15c3–3 would require broker-dealers to include in the customer reserve formula credit balances related to futures positions in a portfolio margin account. The proposed amendment to add a line item to the debits in the customer reserve formula of Rule 15c3–3a would require broker-dealers to include the amount of customer margin required and on deposit at a futures clearing organization as a ''debit'' in the reserve formula. Accordingly, these proposed amendments would require changes to the systems broker-dealers use to compute and account for their customer reserve requirements. We assume that the responsibility for updating these systems will be undertaken by a Senior Programmer. The SIA Management Report 2005 indicates the average hourly cost of this position is approximately $268. We estimate the senior programmer would spend approximately 130 hours to modify software to conform it to the requirements of the proposed amendments. Therefore, we estimate that the program and systems changes would result, on average, in a one-time cost of approximately $34,840 on per broker-dealer.[179] For these reasons, we estimate the total one-time cost to the industry would be approximately $1,149,720.[180]

As noted above, we request comment on these proposed cost estimates. In particular, we request comment on additional costs to broker-dealers that would arise from these proposals, such as system costs in addition to those discussed above (*e.g.*, costs associated with purchasing new software and updates to existing software). We also request comment on whether these proposals would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

C. Amendments With Respect to Securities Borrowed and Loaned and Repo Activities

We are proposing amendments to strengthen the financial responsibility of broker-dealers engaging in a securities lending business. The proposed amendments would require broker-dealers to (1) disclose the principals and obtain certain agreements from the principals in a transaction where they provide settlement services in order to be considered an agent (as opposed to a principal) for the purposes of the net capital rule, and (2) provide notice to the Commission and other regulatory authorities if the broker-dealer's securities borrowed and loan or securities repurchase/reverse repurchase activity reaches a certain threshold or, alternatively, provide regulatory authorities with a monthly report of the broker-dealer's securities borrowed and loan or securities repurchase/reverse repurchase activity.

1. Benefits

The proposed amendments are intended to strengthen the financial responsibility of broker-dealers engaged in a securities lending or repo business and to assist securities regulators in

[177] $11.4 billion − $3.8 billion = $7.6 billion.

[178] This estimate is based on data from FOCUS Report filings.

[179] 130 hours × $268 = $34,840.

[180] 33 broker-dealers × $34,840 = $1,149,720.

monitoring such activities. This would assist securities regulators in responding to situations where a broker-dealer was in financial difficulty due to a large securities lending or repo position. This would help prevent significant losses to the firm's customers and other broker-dealers, and reduce financial system risk.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

2. Costs

i. Requirements To Avoid Principal Liability

As discussed with respect to the PRA, we understand that most existing standard securities lending master agreements in use today already contain language requiring agent lenders to disclose principals and for principals to agree not to hold the agents liable for a counterparty default. Thus, the standard agreement used by the vast majority of broker-dealers should contain the representations and disclosures required by the proposed amendment. However, a small percentage of broker-dealers may need to modify their standard agreements. As discussed with respect to the PRA, we estimate that approximately nine broker-dealers would need to amend their securities lending agreements to include the required provision and that they would each spend, on average, approximately 20 hours in making the changes. We estimate that the responsibility for changing the language in the securities lending master agreement template would be undertaken collectively by an associate general counsel and attorney. The SIA Management Report 2005 indicates that the average hourly cost of these positions respectively is $431 for the associate general counsel and $327 for the attorney. We estimate that, on average, the attorney would spend 16 hours changing the template and the associate general counsel would spend four hours overseeing the project. Therefore, we estimate that the one-time cost to make these changes would be, on average, $6,956 per firm.[181] For these reasons, we estimate the total one-time cost to the industry would be approximately $62,604.[182]

As noted above, we request comment on these proposed cost estimates. In particular, we request comment on additional costs to broker-dealers that would arise from these proposals, such as costs arising from making systems changes. We also request comment on whether these proposals would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

ii. Notices or Monthly Reports

The proposed amendment to Rule 17a–11 would require broker-dealers engaged in securities lending or repurchase activities to either: (1) File a notice with the Commission and their designated examining authority whenever the total money payable against all securities loaned, subject to a reverse repurchase agreement or the contract value of all securities borrowed or subject to a repurchase agreement exceeds 2500% of tentative net capital; or, alternatively, (2) file a monthly report on their securities lending and repurchase activities with their designated examining authority.

As discussed with respect to the PRA, based on FOCUS Report filings, we estimate that approximately twelve notices per year would be sent pursuant to this proposed amendment. We further estimate that a broker-dealer would spend, on average, approximately ten minutes of employee resources to prepare and send the notice. Therefore, we estimate that the costs to the industry associated with this requirement would be de minimis.

As for the monthly reports, we estimated with respect to the PRA that approximately 21 broker-dealers would choose the option under the proposed rule of filing the reports. We also estimated with respect to the PRA that each firm would spend, on average, approximately 100 hours of employee resources updating its systems to generate the report. For the purposes of this cost analysis, we assume that the responsibility for updating these systems would be undertaken by a Senior Programmer. The SIA Management Report 2005 indicates the average hourly cost of this position is approximately $268. Therefore, we estimate that the systems changes would result, on average, in a one-time cost of approximately $26,800 per broker-dealer.[183] For these reasons, we estimate the total one-time cost to the industry would be approximately $562,800.[184]

As for the annual costs of generating and filing the monthly report, we estimated with respect to the PRA that a broker-dealer would spend, on average, approximately one hour per month (or twelve hours per year) of employee resources to generate and send the report. We assume the responsibility for generating and filing the monthly report would be undertaken by a junior stock loan manager. The SIA Management Report 2005 indicates the average hourly cost for this position is $208. We further estimate that a junior stock loan manager would spend, on average, approximately one hour per month compiling and filing this report for an average monthly cost of $208. Therefore, we estimate the cost to file the reports would be approximately $2,496 per firm.[185] For these reasons, we estimate the total annual cost to the industry would be approximately $52,416.[186]

As noted above, we request comment on these proposed cost estimates. In particular, we request comment on additional costs to broker-dealers that would arise from these proposals. We also request comment on whether these proposals would impose costs on other market participants, including persons active in the securities lending and repo markets. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

D. Documentation of Risk Management Procedures

We are proposing amendments to the broker-dealer books and records rules that would require certain large broker-dealers to document in writing the procedures and guidelines they use for managing risk. The proposed amendments do not require broker-dealers to implement procedures. Rather, they require the documentation of procedures that have been established by the broker-dealer.

1. Benefits

These proposed amendments would require large broker-dealers to document the controls they have implemented to address the risks they face as a result of their business activities. This would benefit the firms by mitigating the risk of financial loss or collapse and their customers by mitigating the risk of losses associated with a firm's failure or an employee's improper activities. Moreover, by strengthening the internal processes of the broker-dealers, these proposed amendments would benefit market participants and reduce systemic financial risk. In addition, by making the documented controls a required

[181] ([16 hours] × [$327 per hour]) + ([4 hours] × [$431 per hour]) = $6,956.

[182] 9 broker-dealers × $6,956 = $62,604.

[183] 100 hours × $268 = $26,800.

[184] 21 broker-dealers × $26,800 = $562,800.

[185] ([1 hour] × [$208 per hour]) × 12 months = $2,496.

[186] 21 broker-dealers × $2,496 = $52,416.

record, securities regulators would have better access to them. This would assist regulators in monitoring the risks faced by broker-dealers and understanding the controls they implement to address the risks.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

2. Costs

These proposed amendments would apply to a limited number of broker-dealers, namely, those firms with more than $1 million in customer credits or $20 million in capital. This proposed requirement would result in a one-time cost to some of these firms to the extent they had established procedures that had not been documented. We believe, generally, that most of these firms have documented their established risk management controls and procedures. For these reasons, we estimated with respect to the PRA that the one-time hourly burden to meet the requirements of these proposed rules would range from 0 hours for some firms and to hundreds of hours for other firms. Taking this into account, we estimated with respect to the PRA that a broker-dealer would spend, on average, approximately 120 hours of employee resources augmenting its documented procedures to come into compliance with this proposed amendment.

For the purposes of this cost analysis, we estimate that the responsibility for documenting the risk management procedures and controls a broker-dealer has established would be coordinated by an attorney working with operations specialists from the various risk management departments in the firm. We further estimate that the project would be overseen by an associate general counsel. The SIA Management Report 2005 indicates the average hourly costs of these positions respectively are approximately $431 for an associate general counsel, $327 for an attorney and $144 for an operations specialist. We estimate that the attorney would spend 40 hours compiling and documenting the procedures, the operations specialists collectively would spend 70 hours working with the attorney, and the associate general counsel would spend ten hours overseeing the project. Therefore, we estimate that the average one-time cost per firm to comply with these proposed amendments would be $27,470.[187] We estimated with respect to the PRA that these amendments would apply to approximately 517 broker-dealers. For these reasons, we estimate that the total one-time cost to the industry would be approximately $14,201,990.[188]

As noted above, we request comment on these proposed cost estimates. In particular, we request comment on additional costs to broker-dealers that would arise from these proposals, such as costs arising from making changes to systems and costs associated with maintaining these records. We also request comment on whether these proposals would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

E. Amendments to the Net Capital Rule

1. Requirement to Add Back Certain Liabilities to Net Worth and Treat Certain Capital Contributions as Liabilities

These proposed amendments to Rule 15c3–1 would require a broker-dealer to add back to net worth, when calculating net capital, liabilities assumed by a third-party if the third-party did not have the financial wherewithal to pay the liabilities. The proposed amendments also would require a broker-dealer to treat as liabilities capital contributions where the investor has the option to withdraw the capital at any time.

i. Benefits

These proposed amendments to Rule 15c3–1 would assist investors and regulators by requiring broker-dealers to provide a more accurate picture of their financial condition. This would permit regulators to react more quickly if a firm experiences financial difficulty. This would benefit customers of a troubled broker-dealer as well as its counterparties and, accordingly, reduce systemic risk in the securities markets. We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

ii. Costs

These proposed amendments would apply to all broker-dealers. However, the requirements only would impact a few broker-dealers, namely those that have sought to shift their liabilities to a third-party that lacks the resources—independent of the broker-dealer—to assume the liabilities or those that provide investors with options to withdraw capital. We believe the vast majority of broker-dealers either do not seek to transfer responsibility for their liabilities to a third-party or, if they do so, rely on a third-party that has the financial resources—independent of the assets and revenue of the broker-dealer—to pay the obligations as they become due. We also believe that most broker-dealers do not accept capital contributions under agreements permitting the investor to withdraw the capital at any time.

FOCUS Report filings indicate that approximately 702 broker-dealers report having no liabilities. For the purposes of this analysis, we conservatively estimate that the proposed amendment would impact all of these firms. Requiring these broker-dealers to book liabilities would decrease the amount of equity capital held by the firms and in some cases may require them to obtain additional capital. The majority of broker-dealers reporting no liabilities are introducing broker-dealers that have a $5,000 minimum net capital requirement. The reported average for total aggregate liabilities of introducing broker-dealers is $280,354 per firm. Therefore, conservatively estimating that the 702 broker-dealers would have to each raise $280,354 in additional capital as result of the proposed requirement, the total aggregate amount of additional capital that would need to be raised would be $196,808,508.[189] We further estimate that the cost of capital is approximately 5%.[190] Therefore, we estimate that the total annual cost to the industry would be approximately $10 million.[191]

We estimate that amendments requiring broker-dealers to treat certain capital contributions as liabilities should not result in significant additional costs. Generally, broker-dealers do not enter into agreements permitting an owner to withdraw capital at any time. To the extent some firms may have engaged in this practice, they could have to pay more for capital. Conservatively, we estimate that no more than $100 million in capital at broker-dealers is subject to such agreements. Assuming an incremental

[187] ([40 hours] × [$327 per hour]) + ([70 hours] × [$144 per hour]) + ([10 hours] × [$431 per hour]) = $27,470.

[188] 517 broker-dealers × $27,470 = $14,201,990.

[189] 702 broker-dealers × $280,354 = $196,808,508.

[190] We estimate this generally would be the cost to a broker-dealer to obtain a subordinated loan that meets requirements of Rules 15c3–1 and 15c3–1d (17 CFR 240.15c3–1d).

[191] $196,809,000 × 5% = $9,840,300.

cost of capital of 2.5%, we estimate that the proposed amendment would result in an annual cost of approximately $2.5 million.[192]

As noted above, we request comment on these proposed cost estimates. In particular, we request comment on additional costs to broker-dealers that would arise from these proposals. We also request comment on whether these proposals would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

2. Account for Excess Fidelity Bond Deductibles

This proposed amendment would require broker-dealers to deduct from net capital, with regard to fidelity bonding requirements prescribed by a broker-dealer's examining authority, the excess of any deductible amount over the maximum amount permitted by self-regulatory organization rules.

i. Benefits

Self-regulatory organization rules relating to fidelity bonding requirements provide safeguards with respect to the financial responsibility and related practices of broker-dealers. This proposed amendment would clarify that broker-dealers subject to capital charges under self-regulatory organization rules for excess fidelity bond deductibles also should include such deductions when determining net capital for purposes of Rule 15c3–1.[193] This would help in ensuring that broker-dealers do not exceed regulatory limitations for fidelity bond deductibles.

ii. Costs

This proposed amendment would codify in a Commission rule capital charges that broker-dealers are currently required to take pursuant to the rules of various self-regulatory organizations. The proposed amendment would not impose additional costs on broker-dealers with respect to the purchasing or carrying of fidelity bond coverage. Nor would the proposed amendment cause broker-dealers to incur additional costs in determining or reporting excess deductible amounts over the maximum amount permitted. Broker-dealers already make such determinations under self-regulatory organization rules, and the manner in which such excesses are typically reported (*i.e.*, through periodic FOCUS and other reports) would remain the same. For these reasons, we believe any costs arising from this proposed amendment would be de minimis.

As noted above, we request comment on this cost estimate. In particular, we request comment on whether there would be any costs to broker-dealers as a consequence of this proposal. We also request comment on whether this proposal would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

3. Broker-Dealer Solvency Requirement

This proposed amendment to Rule 15c3–1 would require broker-dealers to cease doing a securities business if they become subject to certain insolvency events. The companion amendment to Rule 17a–11 would require such broker-dealers to provide notice of their insolvency to regulatory authorities.

i. Benefits

The proposed amendment to Rule 15c3–1 would benefit the securities markets by removing risks associated with having a financially unstable firm continue to operate. For example, the broker-dealer would not be able to take on new customers and place their assets at risk of being lost in its financial collapse or frozen in a liquidation proceeding. Furthermore, the broker-dealer would not be able to enter into proprietary transactions with other broker-dealers and place them or clearing agencies at risk of counterparty default. The broker-dealer's existing customers also would benefit in that ceasing a securities business would assist in preserving any remaining capital of the firm, which could be used to facilitate on orderly liquidation.

The proposed amendment to Rule 17a–11 also would benefit the securities markets in that it would provide regulators with the opportunity to take steps to protect customers and counterparties at the onset of the insolvency. These steps could include facilitating the transfer of customer accounts to a solvent broker-dealer and monitoring the liquidation of proprietary positions.

ii. Costs

For the most part, the proposed amendments would have no impact on existing broker-dealers. Should a broker-dealer become subject to an insolvency proceeding, it would incur the cost of sending notice of that fact to the Commission and its designated examining authority. We believe this would be a rare occurrence and, accordingly, with respect to the PRA estimated it would happen approximately six times a year. For these reasons, we estimate that any costs arising from this proposed amendment would be de minimis.

As noted above, we request comment on this cost estimate. In particular, we request comment on whether there would be costs to broker-dealers as a consequence of this proposal. We also request comment on whether this proposal would impose costs on other market participants, including broker-dealer customers. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

4. Order Restricting Withdrawal of Capital From a Broker or Dealer Amendment

This proposed amendment to Rule 15c3–1(e) would eliminate the qualification on Commission orders restricting withdrawals, advances and unsecured loans made by broker-dealers that limits the order to instances when recent withdrawals, advances or loans, in the aggregate, exceed thirty percent of the broker-dealer's excess net capital.

i. Benefits

The proposed amendment to Rule 15c3–1 would benefit the securities markets by protecting customers and counterparties of a financially stressed broker-dealer. For example, the broker-dealer would not be able to make an unsecured loan to a stockholder or withdraw equity capital while the order was outstanding, thereby preserving the assets and liquidity of the broker-dealer and enabling the Commission and its staff to examine the broker-dealer's financial condition, net capital position and the risk exposure to the customers and creditors of the broker-dealer to ensure the financial integrity of the firm.

ii. Costs

The current rule permitting the Commission to restrict withdrawals of capital from a financially distressed broker-dealer was adopted in 1991.[194] Based on this experience with the rule, we estimate that the proposed amendment would result in no or de minimis costs to broker-dealers.

As noted above, we request comment on this cost estimate. In particular, we request comment on whether there would be costs to broker-dealers as a consequence of this proposal. We also request comment on whether this proposal would impose costs on other

[192] $100,000,000 × 2.5% = $2,500,000.

[193] 17 CFR 240.15c3–1.

[194] *See* Exchange Act Release No. 28927 (February 28, 1991), 56 FR 9124 (March 5, 1991).

market participants. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

5. Adjusted Net Capital Requirements

These proposed amendments would adjust required charges for broker-dealers under Rule 15c3–1. The adjustments would better align the net capital requirements of affected firms with the risks Rule 15c3–1 seeks to mitigate. The amendments are relaxing existing requirements and, therefore, would not result in costs to broker-dealers. Moreover, because they seek to better match capital requirements with actual risk, they should not have an adverse impact on the financial strength of broker-dealers.

i. Calculating Theoretical Pricing Charges

The proposed amendment to paragraph (b)(1)(vi) of Rule 15c3–1a would make permanent the reduced net capital requirements that apply to listed option positions in major market foreign currencies and high-capitalization and non-high-capitalization diversified indexes in non-clearing option specialist and market maker accounts. This would benefit the broker-dealers that have been calculating charges under the temporary relief granted by the Commission staff. Because broker-dealers are already operating under the temporary relief, we believe the amendment would not result in any costs.

We request comment on available metrics to quantify the benefits identified above and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

In addition, we request comment on whether the proposal would result in costs. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

ii. Reduced Haircut on Money Market Funds

Reducing the money market funds haircut from 2% to 1% would benefit all broker-dealers in that it will make it less costly, in terms of capital allocation, to hold these investments. We do not believe the proposed amendment would result in any costs.

We request comment on available metrics to quantify the benefits identified above and any other benefits the commenter may identify. Commenters are requested to identify sources of empirical data that could be used for the metrics they propose.

In addition, we request comment on whether the proposal would result in costs. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

F. Total Estimates Costs

Given the estimates set forth above, the total one-time estimated cost to the industry resulting from these rule proposals would be approximately $32,814,454 [195] and the total estimated annual cost to the industry resulting from these rule proposals would be approximately $39,651,716.[196]

VI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, And Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and must consider or determine if an action is necessary or appropriate in the public interest, to consider if the action will promote efficiency, competition, and capital formation.[197] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact that any such rule would have on competition.[198] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed amendments are intended to promote efficiency, competition, and capital formation. They should not have any anti-competitive effects.

The Commission requests comment on whether the proposed amendments are likely to promote efficiency, competition, and capital formation.

A. Amendments to the Customer Protection Rule

The proposed amendments to the customer protection rule respecting PAB accounts,[199] cash deposits at special reserve bank accounts,[200] allocation of short positions,[201] and the treatment of free credit balances [202] are designed to protect and preserve customer property held at broker-dealers. These protections would reduce the risks to individual investors and, thereby, promote participation in the securities markets. Also, by strengthening requirements designed to protect customer property, they would mitigate potential exposure of the fund administered by the Securities Investor Protection Corporation (''SIPC'') that is used to make advances to customers whose securities or cash are unable to be returned by a failed broker-dealer. The amendments reducing the debit reduction for alternative standard firms from 3% to 1% and clarifying that funds in certain commodities accounts need not be treated as ''free credit balances'' would free up capital and, in the latter case, clarify an ambiguity in Rule 15c3–3.[203] These results would promote capital formation and increase efficiency. The amendment expanding the definition of qualified securities would reduce operational burdens associated with holding securities in the customer reserve account and, thereby, promote efficiency.[204]

B. Portfolio Margining Amendments

The proposed amendments to accommodate portfolio margining [205] would promote greater efficiency, competition and capital formation. They are designed to provide portfolio margin customers with greater protection through the reserve requirements of Rule 15c3–3 and SIPA. This, in turn, would make portfolio margining more attractive to investors. Portfolio margining can significantly reduce customer margin requirements for offsetting positions involving securities and futures products, which in turn reduces the costs of trading such products. Moreover, portfolio margining promotes competition and better price discovery across securities and futures products by allowing customers to offset a position assumed in one market with a product traded on another market.

C. Securities Lending and Borrowing Amendments

The proposed amendment requiring broker-dealers to disclaim principal liability in securities lending transactions to avoid certain capital charges under Rule 15c3–1 [206] is consistent with the goal of promoting efficiency and competition in the marketplace. This proposed amendment would help eliminate the legal uncertainty among counterparties as to the role played by market participants

[195] $8,773,410 + $603,000 + $28,930 + $3,752,000 + $2,680,000 + $1,000,000 + $1,149,720 + $62,604 + $562,800 + $14,201,990 = $32,814,454.

[196] $2,599,300 + $24,500,000 + $52,416 + $10,000,000 + $2,500,000 = $39,651,716.

[197] 15 U.S.C. 78c(f).

[198] 15 U.S.C. 78w(a)(2).

[199] *See* section II.A.1 of this release.

[200] *See* section II.A.2 of this release.

[201] *See* section II.A.4 of this release.

[202] *See* section II.A.5.i of this release.

[203] *See* sections II.A.6 and II.A.7 of this release.

[204] *See* section II.A.3 of this release.

[205] *See* section II.B of this release.

[206] *See* section II.C of this release.

in such transactions and clarify the nature of the services that securities lending intermediaries provide their counterparties. The proposed amendment to Rule 17a–11 [207] to require a broker-dealer to provide notice if its securities lending or repo transactions reach a certain threshold, or alternatively provide its DEA with a monthly report, is designed to enhance the monitoring of these activities by securities regulators and, thereby, protect broker-dealer customers and counterparties from the impact of a financial collapse. This would strengthen the securities markets and make them more attractive to investors.

D. Documentation of Risk Management Procedures

The proposed amendments to Rules 17a–3 and 17a–4 [208] requiring firms to document their risk management controls and procedures are designed to reduce the risks inherent to the business of operating as a broker-dealer and, thereby, enhance a broker-dealer's financial soundness. This would strengthen the securities markets making them more attractive to investors.

E. Amendments to the Net Capital Rule

The proposed amendments to Rule 15c3–1 (1) requiring a broker-dealer to account for certain liabilities or treat certain capital contributions as liabilities,[209] (2) requiring a broker-dealer to account for certain excess fidelity bond deductibles,[210] (3) requiring an insolvent broker-dealer to cease conducting a securities business and provide notice under the proposed amendment to Rule 17a–11,[211] (4) eliminating the qualification on Commission orders restricting withdrawals, advances, and unsecured loans to instances where recent withdrawals, advances or loans, in the aggregate, exceed thirty percent of the broker-dealer's excess net capital,[212] (5) making permanent the reduced net capital requirements under Appendix A for market makers,[213] and (6) lowering the haircut for money market funds,[214] are consistent with promoting efficiency and competition in the market place.

A broker-dealer that fails to account for liabilities that depend on the broker-dealer's assets and revenues and accepts temporary capital is obscuring its true financial condition. This interferes with the process by which regulators monitor the financial condition of broker-dealers and, thereby, impedes their ability to take proactive steps to minimize the harm to customers, counterparties and clearing agencies resulting from a broker-dealer failure.

Requiring broker-dealers to take net capital charges for excess fidelity bond deductibles imposed under self-regulatory organization rules would promote efficiency by providing certainty as to the applicability of such rules for purposes of Rule 15c3–1. Because fidelity bond requirements provide a safeguard with regard to broker-dealer financial responsibility, the proposed amendment would enhance competition through the operation of more financially sound firms.

The continued operation of an insolvent broker-dealer or the withdrawal of capital from a broker-dealer that may jeopardize such broker-dealer's financial integrity poses financial risk to its customers, counterparties and the securities industry clearance organizations. These risks increase costs.

The elimination of the limitation on Commission orders restricting capital withdrawals from a financially troubled broker-dealer would provide greater protection to customers and counterparties of the firm and securities industry clearance organizations. While such orders would be infrequent, when issued they would lower costs to these entities associated with having an outstanding obligation from the troubled broker-dealer.

The proposed amendments to the net capital rule that would reduce the amount of net capital certain broker-dealers must maintain would improve efficiency and competition and promote capital formation by allowing firms to employ such capital in other areas of their business activities. They also would lower the costs of capital for broker-dealers.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [215] we must advise the OMB as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in (1) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease), (2) a major increase in costs or prices for consumers or individual industries, or (3) significant adverse effect on competition, investment or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of each of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VIII. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA), in accordance with the provisions of the Regulatory Flexibility Act,[216] regarding the proposed amendments to Rules 15c3–1, 15c3–1a, 15c3–2, 15c3–3, 15c3–3a, 17a–3, 17a–4, and 17a–11 under the Exchange Act.

We encourage comments with respect to any aspect of this IRFA, including comments with respect to the number of small entities that may be affected by the proposed amendments. Comments should specify the costs of compliance with the proposed amendments, and suggest alternatives that would accomplish the goals of the amendments. Comments will be considered in determining whether a Final Regulatory Flexibility Analysis is required, and will be placed in the same public file as comments on the proposed amendments. Comments should be submitted to the Commission at the addresses previously indicated.

A. Amendments to the Customer Protection Rule

1. Reasons

The proposed amendment that would require broker-dealers to perform a reserve computation for domestic and foreign broker-dealer accounts is responding to a disparity between Rule 15c3–3 and the SIPA. The proposed amendment that would require broker-dealers to limit the amount of cash deposited in a reserve account at any individual bank and exclude cash deposited with a parent or subsidiary bank is responding to the fact that some firms are concentrating such deposits or placing them at risk of group-wide financial collapses. The proposed amendment that would expand the definition of qualified securities is intended to provide broker-dealers with

[207] *Id.*

[208] *See* section II.D of this release.

[209] *See* section II.E.1 of this release.

[210] *See* section II.E.2 of this release.

[211] *See* section II.E.3 of this release.

[212] *See* section II.E.4 of this release.

[213] *See* section II.E.5.i of this release.

[214] *See* section II.E.5.ii of this release.

[215] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[216] 5 U.S.C. 603.

another option with respect to assets that can be deposited into the customer reserve account. The proposed amendment that would require broker-dealers to obtain possession and control of customers' fully paid and excess margin securities allocated to a short position is responding to the fact that some firms are permitting these positions to accumulate, which puts customers at risk. The proposed amendment that would require broker-dealers to provide certain notices and disclosures before changing the terms and conditions under which the broker-dealer treats customer free credit balances is intended to help assure that the use of customer free credit balances accords with customer preferences. The proposed amendment lowering the aggregate debit item reduction from 3% to 1% is responding to the dramatic increase in debit items accumulating at broker-dealers. The proposed amendment clarifying that funds in certain commodities accounts are not to be treated as ''free credit balances'' is intended to remove uncertainty with respect to their treatment.

2. Objectives

Most of the proposed amendments to Rule 15c3–3 are intended to strengthen the protections afforded to customer assets held at a broker-dealer. The intended result of the proposed amendments is to minimize the risk that customer assets will be lost, tied-up in a liquidation proceeding, or held in a manner that is inconsistent with a customer's expectations. The proposed amendment expanding the definition of qualified security is intended to lower operational burdens of broker-dealers. The proposed amendment eliminating the 3% reduction is intended to better align the requirement to reduce debits with the credit risk being addressed by the requirement. The proposed amendment clarifying the treatment of funds in certain commodities accounts is intended to remove an ambiguity in the rule.

3. Legal Basis

Pursuant to the Exchange Act and, particularly, Section 15, 15 U.S.C. 78o.

4. Small Entities Subject to the Rule

Paragraph (c)(1) of Rule 0–10 [217] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d); [218] and is not affiliated with any person (other than a natural person) that is not a small business or small organization.

The Commission estimates there are approximately eight broker-dealers that performed a customer reserve computation pursuant to Rule 15c3–3 and were ''small'' for the purposes of Rule 0–10.[219]

5. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would (1) require broker-dealers to perform a reserve computation for domestic and foreign broker-dealer accounts, (2) limit the amount that a broker-dealer may deposit in a reserve account at any individual bank in the form of cash, (3) require broker-dealers to obtain possession and control of customers' fully paid and excess margin securities allocated to a short position by borrowing equivalent securities within a specified period of time, (4) require broker-dealers to obtain an affirmative consent from a customer before changing the terms and conditions under which the broker-dealer holds credit balances related to the customer, and (5) lower the aggregate debit reduction.

6. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no Federal rules that duplicate, overlap or conflict with the proposed amendments.

7. Significant Alternatives

Pursuant to section 3(a) of the RFA,[220] the Commission must consider certain types of alternatives, including (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities, (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for 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.

Given the negligible impact these amendments would have on small entities, we do not believe it is necessary or appropriate to establish different compliance or reporting requirements or timetables; clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities; or exempt small entities from coverage of the rule, or any part thereof. The Commission also does not believe that it is necessary to consider whether small entities should be permitted to use performance rather than design standards to comply with the proposed amendments as the amendments already propose performance standards and do not dictate for entities of any size any particular design standards (*e.g.*, technology) that must be employed to achieve the objectives of the proposed amendments.

8. Request for Comments

We encourage the submission of comments to any aspect of this portion of the IRFA. Comments should specify costs of compliance with the proposed amendment and suggest alternatives that would accomplish the objective of the proposed amendments.

B. Portfolio Margining Amendments

1. Reasons

The CBOE and the NYSE rules permit broker-dealers to determine customer margin requirements using a portfolio margin methodology and permit cross-margining; namely, the inclusion in the portfolio margin account of futures and futures options on broad-based securities indices. These proposed amendments are designed to provide portfolio margin customers with protection for futures positions carried in their securities accounts.

2. Objectives

These proposed amendments are designed to provide customers with futures and futures options in a portfolio margin account with SIPA protections.

3. Legal Basis

Pursuant to the Exchange Act and, particularly, section 15.[221]

4. Small Entities Subject to the Rule

Paragraph (c)(1) of Rule 0–10 [222] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d); [223] and is not affiliated with any person (other than a natural

[217] 17 CFR 240.0–10(c)(1).

[218] 17 CFR 240.17a–5(d).

[219] This estimate is based on FOCUS Report filings.

[220] 5 U.S.C. 603(c).

[221] 15 U.S.C. 78o.

[222] 17 CFR 240.0–10(c)(1).

[223] 17 CFR 240.17a–5(d).

person) that is not a small business or small organization.

The Commission estimates there are approximately eight broker-dealers that performed a customer reserve computation pursuant to Rule 15c3–3 and were ''small'' for the purposes of Rule 0–10.[224]

5. Reporting, Recordkeeping, and Other Compliance Requirements

These proposed amendments would (1) revise the definition of ''free credit balances'' in Rule 15c3–3 to include funds in a portfolio margin account relating to certain futures and futures options positions and the market value of futures options as of the filing date in a SIPA proceeding, and (2) add a debit line item to the customer reserve formula in Rule 15c3–3a consisting of margin posted by a broker-dealer to a futures clearing agency.

6. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no Federal rules that duplicate, overlap or conflict with the proposed amendments.

7. Significant Alternatives

Pursuant to Section 3(a) of the RFA,[225] the Commission must consider certain types of alternatives, including (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities, (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for 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.

Given the negligible impact this amendment would have on small entities, we do not believe it is necessary or appropriate to establish different compliance or reporting requirements or timetables; clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities; or exempt small entities from coverage of the rule, or any part thereof.

The Commission also does not believe that it is necessary to consider whether small entities should be permitted to use performance rather than design standards to comply with the proposed amendments as the amendments already propose performance standards and do not dictate for entities of any size any particular design standards (*e.g.*, technology) that must be employed to achieve the objectives of the proposed amendments.

8. Request for Comments

We encourage the submission of comments to any aspect of this portion of the IRFA. Comments should specify costs of compliance with the proposed amendment and suggest alternatives that would accomplish the objective of the proposed amendments.

C. Securities Lending, Borrowing, and Repurchase/Reverse Repurchase Amendments

1. Reasons

In 2001, MJK Clearing, a broker-dealer with a substantial number of customer accounts, failed when it could not meet its securities lending obligations. This failure has highlighted the risks associated with securities lending and the economically similar repurchase and reverse repurchase agreements and the need to manage those risks.

2. Objectives

These proposed amendments are intended to strengthen the documentation controls broker-dealers employ to manage their securities lending and borrowing and securities repurchase and reverse repurchase activities and to enhance regulatory monitoring. The intended result of the amendments is to minimize the risk that a firm would fail as a result of inadequate controls over its securities lending and borrowing securities repurchase and reverse repurchase activities.

3. Legal Basis

Pursuant to the Exchange Act and, particularly, Sections 15 and 17 thereof, 15 U.S.C. 78o and 78q.

4. Small Entities Subject to the Rule

Paragraph (c)(1) of Rule 0–10[226] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d);[227] and is not affiliated with any person (other than a natural person) that is not a small business or small organization.

The Commission estimates that none of the broker-dealers that engage in securities lending and borrowing or securities repurchase and reverse repurchase activity are ''small'' for the purposes Rule 0–10.[228] Therefore, the proposed amendments should not impact on ''small'' broker-dealers.

5. Reporting, Recordkeeping, and Other Compliance Requirements

These proposed amendments would require broker-dealers to (1) disclose the principals and obtain certain agreements from the principals in a transaction where they provide settlement services in order to be considered an agent (as opposed to a principal) for the purposes of the net capital rule, and (2) provide notice to the Commission and other regulatory authorities if the broker-dealer's securities lending or repo activity reaches a certain threshold or, alternatively, provide regulatory authorities with a monthly report of the broker-dealer's securities lending and repo activity.

6. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no Federal rules that duplicate, overlap or conflict with the proposed amendments.

7. Significant Alternatives

Pursuant to Section 3(a) of the RFA,[229] the Commission must consider certain types of alternatives, including (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities, (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for 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.

As noted above, we estimate that this proposed amendment would have no impact on small entities. Thus, we do not believe it is necessary or appropriate to establish different compliance or reporting requirements or timetables; clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities; use performance rather than design standards, or any part thereof.

The Commission also does not believe that it is necessary to consider whether small entities should be permitted to use performance rather than design standards to comply with the proposed amendments as the amendments already

[224] This estimate is based on FOCUS Report filings.

[225] 5 U.S.C. 603(c).

[226] 17 CFR 240.0–10(c)(1).

[227] 17 CFR 240.17a–5(d).

[228] This estimate is based on FOCUS Report filings.

[229] 5 U.S.C. 603(c).

propose performance standards and do not dictate for entities of any size any particular design standards (*e.g.*, technology) that must be employed to achieve the objectives of the proposed amendments.

8. Request for Comments

We encourage the submission of comments to any aspect of this portion of the IRFA. Comments should specify costs of compliance with the proposed amendment and suggest alternatives that would accomplish the objective of the proposed amendments.

D. Documentation of Risk Management Procedures

1. Reasons

Requiring certain large broker-dealers to document their risk management procedures would assist firms in ensuring adherence to their established risk controls and regulators in reviewing the controls.

2. Objectives

These proposed amendments are intended to strengthen the controls certain large broker-dealers employ to manage risk. The intended result of these proposed amendments is to lower systemic risk in the securities industry by enhancing risk management.

3. Legal Basis

Pursuant to the Exchange Act and, particularly, Sections 15 and 17 thereof, 15 U.S.C. 78o and 78q.

4. Small Entities Subject to the Rule

Paragraph (c)(1) of Rule 0–10 [230] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d); [231] and is not affiliated with any person (other than a natural person) that is not a small business or small organization.

The Commission estimates that none of the broker-dealers that would be subject to this proposed amendment would be ''small'' for the purposes Rule 0–10.[232] Therefore, these amendments should not have any impact on ''small'' broker-dealers.

5. Reporting, Recordkeeping, and Other Compliance Requirements

These proposed amendments would require broker-dealers to document any controls, procedures and guidelines they use for managing risk. The proposed amendments do not require broker-dealers to implement procedures. Rather, they require the documentation of any procedures that are being used.

6. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no federal rules that duplicate, overlap or conflict with the proposed amendments.

7. Significant Alternatives

Pursuant to section 3(a) of the RFA,[233] the Commission must consider certain types of alternatives, including (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities, (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for 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.

As noted above, these proposed amendments would have no impact on ''small'' broker-dealers. Thus, we do not believe it is necessary or appropriate to establish different compliance or reporting requirements or timetables; clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities; or exempt small entities from coverage of the rule, or any part thereof.

The Commission also does not believe that it is necessary to consider whether small entities should be permitted to use performance rather than design standards to comply with the proposed amendments as the amendments already propose performance standards and do not dictate for entities of any size any particular design standards (*e.g.*, technology) that must be employed to achieve the objectives of the proposed amendments.

8. Request for Comments

We encourage the submission of comments to any aspect of this portion of the IRFA. Comments should specify costs of compliance with the proposed amendment and suggest alternatives that would accomplish the objective of the proposed amendments.

E. Amendments to the Net Capital Rule

1. Limitations on Withdrawal of Capital, Solvency, Expense Sharing, Temporary Capital and Fidelity Bond Deductions

i. Reasons

Some broker-dealers have excluded from their regulatory financial reports certain liabilities that have been shifted to third-parties that lack the resources—independent of the assets and revenue of the broker-dealer—to pay the liabilities or have utilized infusions of temporary capital. These practices obscure the true financial condition of the broker-dealer and, thereby, impede the ability of regulators to take proactive steps to reduce the harm to customers, counterparties and clearing agencies that may result from the broker-dealer's failure.

Currently, broker-dealers are required to take net capital charges pursuant to self-regulatory organization rules relating to fidelity bond deductions, but Rule 15c3–1 does not explicitly incorporate such charges for purposes of computing net capital.

In the past several years, a number of broker-dealers have sought to obtain protection under the bankruptcy laws while still engaging in a securities business. Permitting an insolvent broker-dealer to continue to transact a securities business endangers its customers and counterparties and places clearance organizations at risk.

An important goal of the Commission is to protect the financial integrity of the broker-dealer so that if the firm must liquidate it may do so in an orderly fashion. Allowing a withdrawal of capital that may jeopardize the financial integrity of a broker-dealer exposes customers and creditors of the broker-dealer to unnecessary risk.

ii. Objectives

The objective of these proposed amendments is to reduce systemic risk to the securities industry associated with the failure of the broker-dealer.

iii. Legal Basis

Pursuant to the Exchange Act and, particularly, Sections 15 and 17 thereof, 15 U.S.C. 78o and 78q.

iv. Small Entities Subject to the Rule

Paragraph (c)(1) of Rule 0–10 [234] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial

[230] 17 CFR 240.0–10(c)(1).

[231] 17 CFR 240.17a–5(d).

[232] This estimate is based on FOCUS Report filings.

[233] 5 U.S.C. 603(c).

[234] 17 CFR 240.0–10(c)(1).

statements were prepared pursuant to Rule 17a–5(d);[235] and is not affiliated with any person (other than a natural person) that is not a small business or small organization.

The Commission estimates that there are approximately 915 broker-dealers that are ''small'' for the purposes Rule 0–10.[236] These proposed amendments would apply to all ''small'' broker-dealers in that they would be subject to the requirements in the proposed amendments.

v. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would require an insolvent broker-dealer to cease conducting a securities business and provide the securities regulators with notice of its insolvency. They also would require broker-dealers to add back certain liabilities and treat certain capital as a liability, as well as require broker-dealers to deduct from net capital, with regard to fidelity bonding requirements, the excess of any deductible amount over the maximum amount permitted by self-regulatory organization rules. Finally, under the proposed amendment to the rule on Commission orders restricting withdrawals of capital, a broker-dealer subject to an order would not be permitted to withdraw any capital.

vi. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no Federal rules that duplicate, overlap or conflict with the proposed amendments.

vii. Significant Alternatives

Pursuant to section 3(a) of the RFA,[237] the Commission must consider certain types of alternatives, including (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities, (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for 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.

Given the minimal impact these amendments will have on small entities, we do not believe it is necessary or appropriate to establish different compliance or reporting requirements or timetables; clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities; or exempt small entities from coverage of the rule, or any part thereof.

The Commission also does not believe that it is necessary to consider whether small entities should be permitted to use performance rather than design standards to comply with the proposed amendments as the amendments already propose performance standards and do not dictate for entities of any size any particular design standards (*e.g.*, technology) that must be employed to achieve the objectives of the proposed amendments.

viii. Request for Comments

We encourage the submission of comments to any aspect of this portion of the IRFA. Comments should specify costs of compliance with the proposed amendment and suggest alternatives that would accomplish the objective of the proposed amendments.

2. Adjusted Net Capital Requirements

i. Reasons

The Commission's experience over the past several years in overseeing the capital requirements of broker-dealers indicates that certain capital charges may be adjusted downward without impairing the goal of the net capital rule. These proposed amendments are a result of this experience.

ii. Objective

The proposed amendments are intended to better align the capital requirements with the risks these requirements are designed to address.

iii. Legal Basis

Pursuant to the Exchange Act and, particularly, Sections 15 and 17 thereof, 15 U.S.C. 78o and 78q.

iv. Small Entities Subject to the Rule

Paragraph (c)(1) of Rule 0–10[238] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d);[239] and is not affiliated with any person (other than a natural person) that is not a small business or small organization.

The Commission estimates that there are approximately 915 broker-dealers that were ''small'' for the purposes Rule 0–10.[240] The amendment to Appendix A of Rule 15c3–1 likely should have no, or little, impact on ''small'' broker-dealers, since most, if not all, of these firms do not carry non-clearing option specialist or market maker accounts. The reduction of the haircut for money market funds from 2% to 1% could impact all ''small'' firms, since they may hold these securities as part of their net capital.

v. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would (1) make permanent a temporary rule that reduced the haircut for non-clearing options specialist and market maker accounts under Appendix A, and (2) lower the haircut for money market funds from 2% to 1%. As noted, we estimate that generally only the second proposed amendment would affect ''small'' broker-dealers.

vi. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no federal rules that duplicate, overlap or conflict with the proposed amendments.

vii. Significant Alternatives

Pursuant to section 3(a) of the RFA,[241] the Commission must consider certain types of alternatives, including (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities, (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for 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.

Given the deregulatory impact of these amendments, we do not believe it is necessary or appropriate to establish different compliance or reporting requirements or timetables; clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities; or exempt small entities from coverage of the rule, or any part thereof.

The Commission also does not believe that it is necessary to consider whether small entities should be permitted to use performance rather than design standards to comply with the proposed amendments as the amendments already propose performance standards and do not dictate for entities of any size any

[235] 17 CFR 240.17a–5(d).

[236] This estimate is based on FOCUS Report filings.

[237] 5 U.S.C. 603(c).

[238] 17 CFR 240.0–10(c)(1).

[239] 17 CFR 240.17a–5(d).

[240] This estimate is based on FOCUS Report filings.

[241] 5 U.S.C. 603(c).

particular design standards (*e.g.*, technology) that must be employed to achieve the objectives of the proposed amendments.

viii. Request for Comments

We encourage the submission of comments to any aspect of this portion of the IRFA. Comments should specify costs of compliance with the proposed amendment and suggest alternatives that would accomplish the objective of the proposed amendments.

IX. Statutory Authority

The Commission is proposing amendments to Rules 15c3–1, 15c3–3, 17a–3, 17a–4 and 17a–11 under the Exchange Act pursuant to the authority conferred by the Exchange Act, including Sections 15, 17, 23(a) and 36.[242]

Text of Proposed Rule

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Commission hereby proposes that Title 17, Chapter II of the Code of Federal Regulation be amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–l, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 240.15c3–1 is amended by:

a. Revising the first sentence of the introductory text of paragraph (a);

b. Revising paragraph (a)(1)(ii)(A);

c. Removing from paragraph (a)(6)(iii)(A) the text ''paragraph (c)(2)(x)(A)(*1*) through (*9*) of this section'' and in its place adding the text ''Appendix A (§ 240.15c3–1a)'';

d. Revising the introductory text of paragraph (c)(2)(i);

e. Adding paragraphs (c)(2)(i)(F) and (G);

f. Revising paragraphs (c)(2)(iv)(B), (c)(2)(iv)(E), and (c)(2)(vi)(D)(*1*);

g. Adding paragraph (c)(2)(xiv) before the undesignated heading;

h. Adding paragraph (c)(16) and an undesignated heading;

i. Revising paragraph (e)(3)(i); and

j. Removing from the second sentence in paragraph (e)(3)(ii) the text ''The hearing'' and in its place adding the text ''A hearing on an order temporarily prohibiting the withdrawal of capital''.

The revisions and additions read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) Every broker or dealer shall at all times have and maintain net capital no less than the greater of the highest minimum requirement applicable to its ratio requirement under paragraph (a)(1) of this section, or to any of its activities under paragraph (a)(2) of this section, and shall otherwise not be ''insolvent'' as that term is defined in paragraph (c)(16) of this section. * * *

* * * * *

(1)(i) * * *

(ii) * * *

(A) Make the computation required by § 240.15c3–3(e) and set forth in Exhibit A, § 240.15c3–3a, on a weekly basis;

* * * * *

(c) * * *

(2) * * *

(i) *Adjustments to net worth related to unrealized profit or loss, deferred tax provisions, and certain liabilities.** * *

* * * * *

(F) Adding to net worth any liability or expense relating to the business of the broker-dealer for which a third party has assumed the responsibility, unless the broker or dealer can demonstrate that the third-party has adequate resources independent of the broker-dealer to pay the liability or expense.

(G) Subtracting from net worth any contribution of capital to the broker or dealer:

(*1*) Under an agreement that provides the investor with the option to withdraw the capital; or

(*2*) That is intended to be withdrawn within a period of one year unless the withdrawal has been approved in writing by the Examining Authority for the broker or dealer. Any withdrawal of capital made within one year of its contribution to the broker or dealer is presumed to be subject to this deduction.

* * * * *

(iv) * * *

(B) All unsecured advances and loans; deficits in customers' and non-customers' unsecured and partly secured notes; deficits in omnibus credit accounts maintained in compliance with the requirements of 12 CFR 220.7(f) of Regulation T under the Act, or similar accounts carried on behalf of another broker or dealer, after application of calls for margin, marks to the market or other required deposits that are outstanding 5 business days or less; deficits in customers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to market or other required deposits that are outstanding 5 business days or less, except deficits in cash accounts as defined in 12 CFR 220.8 of Regulation T under the Act for which not more than one extension respecting a specified securities transaction has been requested and granted, and deducting for securities carried in any of such accounts the percentages specified in paragraph (c)(2)(vi) of this section or Appendix A, § 240.15c3–1a; the market value of stock loaned in excess of the value of any collateral received therefore; receivables arising out of free shipments of securities (other than mutual fund redemptions) in excess of $5,000 per shipment and all free shipments (other than mutual fund redemptions) outstanding more than 7 business days, and mutual fund redemptions outstanding more than 16 business days; and any collateral deficiencies in secured demand notes as defined in Appendix D, § 240.15c3–1d; a broker or dealer that participates in a loan of securities by one party to another party shall be deemed a principal for the purpose of the deductions required under this section, unless the broker or dealer has fully disclosed the identity of each party to the other and each party has expressly agreed in writing that the obligations of the broker or dealer shall not include a guarantee of performance by the other party and that such party's remedies in the event of a default by the other party shall not include a right of setoff against obligations, if any, of the broker or dealer.

* * * * *

(E) *Other deductions.* All other unsecured receivables; all assets doubtful of collection less any reserves established therefore; the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of such fails to receive; the funds on deposit in a ''segregated trust account'' in accordance with 17 CFR 270.27d–1 under the Investment Company Act of 1940, but only to the extent that the amount on deposit in such segregated trust account exceeds the amount of liability reserves established and maintained for refunds of charges required by sections 27(d) and 27(f) of the Investment Company Act of 1940; and cash and securities held in a securities account at another

[242] 15 U.S.C. 78o, 78q. 78w and 78mm.

broker-dealer if the other broker-dealer does not treat the account, and the assets therein, in compliance with paragraphs (b)(5) and (e) of § 240.15c3–3; Provided, That any amounts deposited in special reserve bank accounts established for the exclusive benefit of customers or PAB accounts pursuant to § 240.15c3–3(e) and clearing deposits shall not be deducted.

* * * * *

(vi) * * *

(D)(*1*) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets consist of cash or money market instruments and which is described in § 270.2a–7 of this Chapter, the deduction shall be 1% of the market value of the greater of the long or short position.

* * * * *

(xiv) *Deduction from net worth for excess deductible amounts related to fidelity bond coverage.* Deducting, with respect to fidelity bond coverage, the excess of any deductible amount over the maximum deductible amount permitted by the Examining Authority for the broker or dealer.

* * * * *

Insolvent

(16) A broker or dealer is insolvent for the purposes of this section if the broker-dealer:

(i) Is the subject of any bankruptcy, equity receivership proceeding or any other proceeding to reorganize, conserve, or liquidate such broker or dealer or its property whether commenced voluntarily or involuntarily or is applying for the appointment or election of a receiver, trustee, or liquidator or similar official for such broker or dealer or its property;

(ii) Has made a general assignment for the benefit of creditors;

(iii) Is insolvent within the meaning of section 101 of title 11 of the United States Code, or is unable to meet its obligations as they mature, and has made an admission to such effect in writing or in any court or before any agency of the United States or any State; or

(iv) Is unable to make such computations as may be necessary to establish compliance with this section.

* * * * *

(e) * * *

(3)(i) *Temporary restrictions on withdrawal of net capital.* The Commission may by order restrict, for a period of up to twenty business days, any withdrawal by the broker-dealer of equity capital or unsecured loan or advance to a stockholder, partner, sole proprietor, member, employee or affiliate if the Commission, based on the information available, concludes that such withdrawal, advance or loan may be detrimental to the financial integrity of the broker or dealer, or may unduly jeopardize the broker or dealer's ability to repay its customer claims or other liabilities which may cause a significant impact on the markets or expose the customers or creditors of the broker or dealer to loss without taking into account the application of the Securities Investor Protection Act of 1970.

* * * * *

3. Section 240.15c3–1a is amended by:

a. Removing paragraph (b)(1)(iv)(B); and

b. Redesignating paragraphs (b)(1)(iv)(A), (b)(1)(iv)(A)(*1*), (b)(1)(iv)(A)(*2*), and (b)(1)(iv)(A)(*3*) as paragraphs (b)(1)(iv), (b)(1)(iv)(A), (b)(1)(iv)(B), and (b)(1)(iv)(C) respectively.

4. Section 240.15c3–2 is removed and reserved.

5. Section 240.15c3–3 is amended by:

a. Removing from paragraph (a)(1), third sentence, the citation ''220.19'' and in its place adding the citation ''220.12'';

b. In paragraph (a)(1)(iii), revising the phrase ''(15 U.S.C. 78aaa *et seq.*)'' to read ''(15 U.S.C. 78aaa *et seq.*) (SIPA)'';

c. Revising paragraphs (a)(3), (a)(4), (a)(6), (a)(7) and (a)(8);

d. Adding paragraph (a)(16);

e. Removing from paragraph (b)(3)(iv) the text ''the Securities Investor Protection Act of 1970'' and in its place adding the text ''SIPA'';

f. Removing from paragraph (b)(4)(i)(C) the text ''the Securities Investor Protection Act of 1970'' and in its place adding the text ''SIPA'';

g. Adding paragraph (b)(5);

h. Removing from paragraph (c)(2) the text ''special omnibus'' and in its place adding the text ''omnibus credit'' and removing the text ''section 4(b) of Regulation T under the Act (12 CFR 220.4(b))'' and in its place adding the text ''section 7(f) of Regulation T (12 CFR 220.7(f))'';

i. Removing the period at the end of paragraph (d)(3) and in its place adding ''; or'';

j. Redesignating paragraph (d)(4) as paragraph (d)(5);

k. Adding a new paragraph (d)(4);

l. Revising paragraphs (e) and (f);

m. Revising the first sentence in paragraph (g);

n. Removing from the first sentence of paragraph (i) the text ''reserve bank account'' and in its place adding the text ''Reserve Bank Accounts'';

o. Adding paragraph (j);

p. Revising paragraph (l)(2);

q. Removing from the last sentence in paragraph (m) the text ''special omnibus'' and in its place adding the text ''omnibus credit'' and removing the text ''section 4(b) of Regulation T [12 CFR 220.4(b)]'' and in its place adding ''section 7(f) of Regulation T (12 CFR 220.7(f))''; and

r. Removing from the first sentence in paragraph (n) the cite ''paragraphs (d)(2) and (3)'' and its place adding the cite ''paragraphs (d)(2), (3) and (4)''.

The revisions and additions read as follows:

§ 240.15c3–3 Customer protection—reserves and custody of securities.

(a) * * *

(3) The term *fully paid securities* shall include all securities carried for the account of a customer unless such securities are purchased in a transaction for which the customer has not made full payment.

(4) The term *margin securities* shall mean those securities carried for the account of a customer in a margin account as defined in section 4 of Regulation T (12 CFR 220.4), as well as securities carried in any other account (such accounts hereinafter referred to as ''margin accounts'') other than the securities referred to in paragraph (a)(3) of this section.

* * * * *

(6) The term *qualified security* shall mean:

(i) A security issued by the United States or guaranteed by the United States with respect to principal or interest; and

(ii) A redeemable security of an unaffiliated investment company registered under the Investment Company Act of 1940 and described in § 270.2a–7 of this chapter that:

(A) Has assets consisting solely of cash and securities issued by the United States or guaranteed by the United States with respect to principal and interest;

(B) Agrees to redeem fund shares in cash no later than the business day following a redemption request by a shareholder; and

(C) Has net assets (assets net of liabilities) equal to at least 10 times the value of the fund shares held by the broker-dealer in the customer reserve account required under paragraph (e) of this section.

(7) The term *bank* shall mean a bank as defined in section 3(a)(6) of the Act and shall also mean any building and loan, savings and loan or similar banking institution subject to supervision by a Federal banking

authority. With respect to a broker or dealer who maintains his principal place of business in Canada, the term *bank* shall also mean a Canadian bank subject to supervision by a Canadian authority.

(8) The term *free credit balances* shall mean liabilities of a broker or dealer to customers which are subject to immediate cash payment to customers on demand, whether resulting from sales of securities, dividends, interest, deposits or otherwise, excluding, however, funds in commodity accounts which are segregated in accordance with the Commodity Exchange Act or in a similar manner, or which are funds carried in a *proprietary account* as that term is defined in regulations under the Commodity Exchange Act. The term *free credit balances* also shall include such liabilities carried in a securities account pursuant to a self-regulatory organization portfolio margining rule approved by the Commission under section 19(b) of the Act (''SRO portfolio margining rule''), including daily marks to market, and proceeds resulting from closing out futures contracts and options thereon, and, in the event the broker-dealer is the subject of a proceeding under SIPA, the market value as of the ''filing date'' as that term is defined in SIPA (15 U.S.C. 78*lll*(7)) of any long options on futures contracts.

* * * * *

(16) The term *PAB account* means a proprietary securities account of a broker or dealer (which includes a foreign broker or dealer, or a foreign bank acting as a broker or dealer), but shall not include an account where the account owner is a guaranteed subsidiary of the carrying broker or dealer, the account owner guarantees all liabilities and obligations of the carrying broker or dealer, or the account is a delivery-versus-payment account or a receipt-versus-payment account.

(b) * * *

(5) A broker or dealer shall not be required to obtain and thereafter to maintain the physical possession or control of securities carried for a PAB account, provided that the broker or dealer has obtained the written permission of the account owner to use the securities in the ordinary course of its securities business.

* * * * *

(d) * * *

(4) Securities included on his books or records as a proprietary short position or as a short position for another person, excluding positions covered by paragraph (m) of this section, for more than 10 business days (or more than 30 calendar days if the broker or dealer is a market maker in the securities), then the broker or dealer shall, not later than the business day following the day on which the determination is made, take prompt steps to obtain physical possession or control of such securities.

* * * * *

(e) *Special reserve bank accounts for the exclusive benefit of customers and PAB accounts.*

(1) Every broker or dealer shall maintain with a bank or banks at all times when deposits are required or hereinafter specified ''Special Reserve Bank Account for the Exclusive Benefit of Customers'' (hereinafter referred to as the *Reserve Bank Account*) and a ''Special Reserve Bank Account for Brokers and Dealers (hereinafter referred to as the *PAB Reserve Bank Account*, and together with the *Reserve Bank Account*, the *Reserve Bank Accounts*), each of which shall be separate from the other and from any other bank account of the broker or dealer. Such broker or dealer shall at all times maintain in the Reserve Bank Accounts, through deposits made therein, cash and/or qualified securities in amounts computed in accordance with the formula attached as Exhibit A, as applied to customer and PAB accounts respectively.

(2) With respect to each computation required pursuant to paragraph (e)(1) of this section, it shall be unlawful for any broker or dealer to accept or use any of the amounts under items comprising Total Credits under the formula referred to in paragraph (e)(1) of this section except for the specified purposes indicated under items comprising Total Debits under the formula, and, to the extent Total Credits exceed Total Debits, at least the net amount thereof shall be maintained in the Reserve Bank Accounts pursuant to paragraph (e)(1) of this section.

(3)(i) Computations necessary to determine the amount required to be deposited in Reserve Bank Accounts as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than one hour after the opening of banking business on the second following business day; provided, however, a broker or dealer which has aggregate indebtedness not exceeding 800 per centum of net capital (as defined in § 240.15c3–1 or in the capital rules of a national securities exchange of which it is a member and exempt from § 240.15c3–1 by paragraph (b)(2) of that section) and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding $1,000,000, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 per centum of the amount so computed no later than one hour after the opening of banking business on the second following business day.

(ii) If a broker or dealer, computing on a monthly basis, has, at the time of any required computation, aggregate indebtedness in excess of 800 per centum of net capital, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when his aggregate indebtedness exceeded 800 per centum of his net capital.

(iii) Any broker or dealer that does not carry the accounts of a ''customer'' as defined by this section or conduct a proprietary trading business may make the computation to be performed with respect to PAB accounts under paragraph (e)(1) of this section monthly rather than weekly. If a broker or dealer performing the computation with respect to PAB accounts under paragraph (e)(1) of this section on a monthly basis is, at the time of any required computation, required to deposit additional cash or qualified securities in the PAB Special Reserve Account, the broker or dealer shall thereafter perform the computation required with respect to PAB accounts under paragraph (e)(1) of this section weekly until four successive weekly computations are made, none of which is made at a time when the broker or dealer was required to deposit additional cash or qualified securities in the PAB Special Reserve Account.

(iv) Computations in addition to the computations required in this section, may be made as of the close of any business day, and the deposits so computed shall be made no later than one hour after the opening of banking business on the second following business day.

(v) The broker or dealer shall make and maintain a record of each such computation made pursuant to this section or otherwise and preserve each such record in accordance with § 240.17a–4.

(4) If the computation performed under paragraph (e)(3) of this section with respect to PAB accounts results in a deposit requirement, the requirement may be satisfied to the extent of any excess debit in the computation performed under paragraph (e)(3) of this

section with respect to customer accounts of the same date. However, a deposit requirement resulting from the computation performed under paragraph (e)(3) of this section with respect to customer accounts cannot be satisfied with excess debits from the computation performed under paragraph (e)(3) of this section with respect to PAB accounts.

(5) In determining whether a broker or dealer maintains the minimum deposits required under this section, the broker or dealer shall exclude the total amount of any cash deposited with a parent or affiliate bank. The broker or dealer also shall exclude cash deposited with a non-parent and non-affiliated bank to the extent that:

(i) The amount of the deposit exceeds 50% of the broker-dealer's excess net capital, based on the broker-dealer's most recently filed FOCUS report; or

(ii) The amount of the deposit exceeds 10% of the bank's equity capital as reported by the bank in its most recent Call Report or Thrift Financial Report.

(f) *Notification of banks.* A broker or dealer required to maintain the Reserve Bank Accounts prescribed by this section or who maintains a Special Account referred to in paragraph (k) of this section shall obtain and preserve in accordance with § 240.17a–4 a written notification from each bank in which he has his Reserve Bank Accounts or Special Account that the bank was informed that all cash and/or qualified securities deposited therein are being held by the bank for the exclusive benefit of customers of the broker or dealer (or, in the case of the PAB Special Reserve Account, for the benefit of brokers or dealers) in accordance with the regulations of the Commission, and are being kept separate from any other accounts maintained by the broker or dealer with the bank, and the broker or dealer shall have a written contract with the bank which provides that the cash and/or qualified securities shall at no time be used directly or indirectly as security for a loan to the broker or dealer by the bank and, shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank.

(g) *Withdrawals from the reserve bank accounts.* A broker or dealer may make withdrawals from his Reserve Bank Accounts if and to the extent that at the time of the withdrawal the amount remaining in each Reserve Bank Account is not less than the amount then required by paragraph (e) of this section. * * *

* * * * *

(j) *Treatment of free credit balances.* (1) It shall be unlawful for a broker or dealer to accept or use any free credit balance carried for the account of any customer of the broker or dealer unless such broker or dealer has established adequate procedures pursuant to which each customer for whom a free credit balance is carried will be given or sent, together with or as part of the customer's statement of account, whenever sent but not less frequently than once every three months, a written statement informing the customer of the amount due to the customer by the broker or dealer on the date of the statement, and that the funds are payable on demand of the customer.

(2) It shall be unlawful for a broker or dealer to convert, invest, or otherwise transfer to another account or institution, free credit balances held in a customer's account except as provided in paragraphs (j)(2)(i), (ii) and (iii).

(i) A broker or dealer is permitted to convert, invest, or otherwise transfer to another account or institution, free credit balances in a customer's account only upon a specific order, authorization, or draft from the customer, and only in the manner, and under the terms and conditions, specified in the order, authorization, or draft.

(ii) A broker or dealer is permitted to transfer free credit balances held in the account of a customer opened on or after the effective date of this paragraph to either a money market mutual fund product as described in § 270.2a–7 of this chapter or an interest bearing account at a bank without a specific order, authorization or draft for each such transfer, provided:

(A) The customer has previously affirmatively consented to such treatment of the free credit balances after being notified of the different general types of money market mutual fund and bank account products in which the broker or dealer may transfer the free credit balances and the applicable terms and conditions that will apply if the broker or dealer changes the product or type of product in which free credit balances are transferred;

(B) The broker or dealer provides the customer on an ongoing basis with all disclosures and notices regarding the investment and deposit of free credit balances as required by the self-regulatory organizations for which the broker or dealer is a member;

(C) The broker or dealer provides notice to the customer as part of the customer's quarterly statement of account that the money market mutual funds or bank deposits to which the free credit balances have been transferred can be liquidated on the customer's demand and held as free credit balances; and

(D) The broker or dealer provides the customer with at least 30 calendar days notice before the free credit balances will begin being transferred to a different product, different product type, or into the same product but under materially different terms and conditions. The notice must describe the new money market fund, bank deposit type, or terms and conditions, and how the customer can notify the broker or dealer if the customer chooses not to have the free credit balances transferred to the new product or product type, or under the new terms and conditions.

(iii) A broker or dealer is permitted to transfer free credit balances that are held or will accumulate in the account of a customer opened before the effective date of this paragraph to either a money market mutual fund product as described in § 270.2a–7 of this chapter or an interest bearing account product at a bank without a specific order, authorization or draft for each such transfer, provided:

(A) The broker or dealer provides the customer on an ongoing basis with all disclosures and notices regarding the investment and deposit of free credit balances as required by the self-regulatory organizations for which the broker or dealer is a member;

(B) The broker or dealer provides notice to the customer as part of the customer's quarterly statement of account that the money market mutual funds or bank deposits to which the free credit balances have been transferred can be liquidated on the customer's demand and held as free credit balances; and

(C) The broker or dealer provides the customer with at least 30 calendar days notice before the free credit balances will begin being transferred to a different product, different product type, or into the same product but under materially different terms and conditions. The notice must describe the new money market fund, bank deposit type, or terms and conditions, and how the customer can notify the broker or dealer if the customer chooses not to have the free credit balances transferred to the new product or product type, or under the new terms and conditions.

* * * * *

(l) * * *

(2) Margin securities upon full payment by such customer to the broker or dealer of his indebtedness to the

broker or dealer; and, subject to the right of the broker or dealer under Regulation T (12 CFR part 220) to retain collateral for his own protection beyond the requirements of Regulation T, excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.

* * * * *

6. Section 240.15c3–3a is revised to read as follows:

§ 240.15c3–3a Exhibit A—Formula for determination of customer and PAB account reserve requirements of brokers and dealers under § 240.15c3–3.

	Credits	Debits
1. Free credit balances and other credit balances in customers' security accounts. (See Note A)	$XXX	
2. Monies borrowed collateralized by securities carried for the account of customers (See Note B)	XXX	
3. Monies payable against customers' securities loaned (See Note C)	XXX	
4. Customers' securities failed to receive (See Note D)	XXX	
5. Credit balances in firm accounts which are attributable to principal sales to customers	XXX	
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	XXX	
7. Market value of short security count difference over 30 calendar days old	XXX	
8. Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days.	XXX	
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	XXX	
10. Debit balances in customers' cash and margin accounts excluding unsecured accounts and accounts doubtful of collection. (See Note E)		$XXX
11. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver		XXX
12. Failed to deliver of customers' securities not older than 30 calendar days		XXX
13. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer and PAB accounts. (See Note F)		XXX
14. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q–1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) related to the following types of positions written, purchased or sold in customer accounts: (1) Security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (See Note G)		XXX
Total credits		
Total debits		
15. Excess of total credits (sum of items 1–9) over total debits (sum of items 10–14) required to be on deposit in the "Reserve Bank Account" (§ 240.15c3–3(c)). If the computation is made monthly as permitted by this section, the deposit shall be not less than 105% of the excess of total credits over total debits		XXX

Notes Regarding the Customer Reserve Computation

Note A. Item 1 shall include all outstanding drafts payable to customers which have been applied against free credit balances or other credit balances and shall also include checks drawn in excess of bank balances per the records of the broker or dealer.

Note B. Item 2 shall include the amount of options-related or security futures product-related Letters of Credit obtained by a member of a registered clearing agency or a derivatives clearing organization which are collateralized by customers' securities, to the extent of the member's margin requirement at the registered clearing agency or derivatives clearing organization. Item 2 shall also include the amount of such Letters of Credit related to other futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule.

Note C. Item 3 shall include in addition to monies payable against customers' securities loaned the amount by which the market value of securities loaned exceeds the collateral value received from the lending of such securities.

Note D. Item 4 shall include in addition to customers' securities failed to receive the amount by which the market value of securities failed to receive and outstanding more than thirty (30) calendar days exceeds their contract value.

Note E. (1) Debit balances in margin accounts shall be reduced by the amount by which a specific security (other than an exempted security) which is collateral for margin accounts exceeds in aggregate value 15 percent of all securities which collateralize all margin accounts receivable; provided, however, the required reduction shall not be in excess of the amounts of the debit balance required to be excluded because of this concentration rule. A specified security is deemed to be collateral for a margin account only to the extent it represents in value not more than 140 percent of the customer debit balance in a margin account.

(2) Debit balances in special omnibus accounts, maintained in compliance with the requirements of Section 7(f) of Regulation T (12 CFR 220.7(f)) or similar accounts carried on behalf of another broker or dealer, shall be reduced by any deficits in such accounts (or if a credit, such credit shall be increased) less any calls for margin, mark to the market, or other required deposits which are outstanding 5 business days or less.

(3) Debit balances in customers' cash and margin accounts included in the formula under Item 10 shall be reduced by an amount equal to 1 percent of their aggregate value.

(4) Debit balances in cash and margin accounts of household members and other persons related to principals of a broker or dealer and debit balances in cash and margin accounts of affiliated persons of a broker or dealer shall be excluded from the Reserve Formula, unless the broker or dealer can demonstrate that such debit balances are directly related to credit items in the formula.

(5) Debit balances in margin accounts (other than omnibus accounts) shall be reduced by the amount by which any single customer's debit balance exceeds 25% (to the extent such amount is greater than $50,000) of the broker-dealer's tentative net capital (*i.e.*, net capital prior to securities haircuts) unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula. Related accounts (*e.g.*, the separate accounts of an individual, accounts under common control or subject to cross guarantees) shall be deemed to be a single customer's accounts for purposes of this provision.

If the registered national securities exchange or the registered national securities association having responsibility for examining the broker or dealer ("designated examining authority") is satisfied, after

taking into account the circumstances of the concentrated account including the quality, diversity, and marketability of the collateral securing the debit balances of margin accounts subject to this provision, that the concentration of debit balances is appropriate, then such designated examining authority may grant a partial or plenary exception from this provision. The debit balance may be included in the reserve formula computation for five business days from the day the request is made.

(6) Debit balances of joint accounts, custodian accounts, participation in hedge funds or limited partnerships or similar type accounts or arrangements of a person who would be excluded from the definition of customer (''noncustomer'') with persons included in the definition of customer shall be included in the Reserve Formula in the following manner: if the percentage ownership of the non-customer is less than 5 percent then the entire debit balance shall be included in the formula; if such percentage ownership is between 5 percent and 50 percent then the portion of the debit balance attributable to the non-customer shall be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula; or if such percentage ownership is greater that 50 percent, then the entire debit balance shall be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula.

Note F. Item 13 shall include the amount of margin deposited with the Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities and letters of credit collateralized by customers' securities.

Note G. (a) Item 14 shall include the amount of margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q–1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) for customer accounts to the extent that the margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.

(b) Item 14 shall apply only if the broker or dealer has the margin related to security futures products or futures (and options thereon) carried in a securities account pursuant to an approved SRO portfolio margining program on deposit with:

(1) A registered clearing agency or derivatives clearing organization that:

(i) Maintains the highest investment-grade rating from a nationally recognized statistical rating organization; or

(ii) Maintains security deposits from clearing members in connection with regulated options or futures transactions and assessment power over member firms that equal a combined total of at least $2 billion, at least $500 million of which must be in the form of security deposits. For the purposes of this Note G, the term ''security deposits'' refers to a general fund, other than margin deposits or their equivalent, that consists of cash or securities held by a registered clearing agency or derivative clearing organization; or

(iii) Maintains at least $3 billion in margin deposits; or

(iv) Does not meet the requirements of paragraphs (b)(1)(i) through (b)(1)(iii) of this Note G, if the Commission has determined, upon a written request for exemption by or for the benefit of the broker or dealer, that the broker or dealer may utilize such a registered clearing agency or derivatives clearing organization. The Commission may, in its sole discretion, grant such an exemption subject to such conditions as are appropriate under the circumstances, if the Commission determines that such conditional or unconditional exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors; and

(2) A registered clearing agency or derivatives clearing organization that, if it holds funds or securities deposited as margin for security futures products or portfolio margin account futures in a bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), obtains and preserves written notification from the bank at which it holds such funds and securities or at which such funds and securities are held on its behalf. The written notification shall state that all funds and/or securities deposited with the bank as margin (including customer security futures products and portfolio margin account futures margin), or held by the bank and pledged to such registered clearing agency or derivatives clearing agency as margin, are being held by the bank for the exclusive benefit of clearing members of the registered clearing agency or derivatives clearing organization (subject to the interest of such registered clearing agency or derivatives clearing organization therein), and are being kept separate from any other accounts maintained by the registered clearing agency or derivatives clearing organization with the bank. The written notification also shall provide that such funds and/or securities shall at no time be used directly or indirectly as security for a loan to the registered clearing agency or derivatives clearing organization by the bank, and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank. This provision, however, shall not prohibit a registered clearing agency or derivatives clearing organization from pledging customer funds or securities as collateral to a bank for any purpose that the rules of the Commission or the registered clearing agency or derivatives clearing organization otherwise permit; and

(3) A registered clearing agency or derivatives clearing organization establishes, documents, and maintains:

(i) Safeguards in the handling, transfer, and delivery of cash and securities;

(ii) Fidelity bond coverage for its employees and agents who handle customer funds or securities. In the case of agents of a registered clearing agency or derivatives clearing organization, the agent may provide the fidelity bond coverage; and

(iii) Provisions for periodic examination by independent public accountants; and

(iv) A derivatives clearing organization that, if it is not otherwise registered with the Commission, has provided the Commission with a written undertaking, in a form acceptable to the Commission, executed by a duly authorized person at the derivatives clearing organization, to the effect that, with respect to the clearance and settlement of the customer securities futures products and portfolio margin account futures of the broker or dealer, the derivatives clearing organization will permit the Commission to examine the books and records of the derivatives clearing organization for compliance with the requirements set forth in § 240.15c3–3a, Note G (b)(1) through (3).

(c) Item 14 shall apply only if a broker or dealer determines, at least annually, that the registered clearing agency or derivatives clearing organization with which the broker or dealer has on deposit margin related to securities future products or portfolio margin account futures meets the conditions of this Note G.

Notes Regarding the PAB Reserve Computation

Note 1. Broker-dealers should use the formula in Exhibit A for the purposes of computing the PAB reserve requirement substituting the term ''brokers or dealers'' for the term ''customers.''

Note 2. Any credit (including a credit applied to reduce a debit) that is included in the computation required by § 240.15c3–3 with respect to customer accounts (the ''customer reserve computation'') may not be included as a credit in the computation required by § 240.15c3–3 with respect to PAB accounts (the ''PAB reserve computation'').

Note 3. Note E(1) to § 240.15c3–3a shall not apply to the PAB reserve computation.

Note 4. Note E(3) to § 240.15c3–3a which reduces debit balances by 1% shall not apply to the PAB reserve computation.

Note 5. Commissions receivable and other receivables of another broker or dealer from the broker or dealer (excluding clearing deposits) that are otherwise allowable assets under § 240.15c3–1 shall not be included in the PAB reserve computation, provided the amounts have been clearly identified as receivables on the books and records of the other broker or dealer and as payables on the books of the broker or dealer. Commissions receivable and other receivables of another broker or dealer from the broker or dealer that are otherwise non-allowable assets under § 240.15c3–1 and clearing deposits of another broker or dealer may be included as ''credit balances'' for purposes of the PAB reserve computation, provided the commissions receivable and other receivables are subject to immediate cash payment to the other broker or dealer and the clearing deposit is subject to payment within 30 days.

Note 6. Credits included in the PAB reserve computation that result from the use of securities held for a PAB account (''PAB securities'') that are pledged to meet intra-day margin calls in a cross-margin account established between The Options Clearing Corporation and any regulated commodity exchange may be reduced to the extent that the excess margin held by the other clearing corporation in the cross-margin relationship is used the following business day to replace the PAB securities that were previously pledged. In addition, balances resulting from a portfolio margin account that are segregated pursuant to Commodity Futures Trading Commission regulations need not be included in the PAB reserve computation.

Note 7. Deposits received prior to a transaction pending settlement which are $5 million or greater for any single transaction or $10 million in aggregate may be excluded as credits from the PAB reserve computation if such balances are placed and maintained in a separate PAB Reserve Account by 12 noon Eastern Time on the following business day. Thereafter, the money representing any such deposits may be withdrawn to complete the related transactions without performing a new PAB reserve computation.

Note 8. A credit balance resulting from a PAB reserve computation may be reduced by the amount that items representing such credits are swept into money market funds or mutual funds of an investment company registered under the Investment Company Act of 1940 on or prior to 10 a.m. Eastern Time on the deposit date provided that the credits swept into any such fund are not subject to any right, charge, security interest, lien, or claim of any kind in favor of the investment company or the broker or dealer. Any credits that have been swept into money market funds or mutual funds must be maintained in the name of a particular broker or for the benefit of another broker.

Note 9. Clearing deposits required to be maintained at registered clearing agencies may be included as debits in the PAB reserve computation to the extent the percentage of the deposit, which is based upon the clearing agency's aggregate deposit requirements (*e.g.*, dollar trading volume), that relates to the proprietary business of other brokers and dealers can be identified.

Note 10. A broker or dealer that clears PAB accounts through an affiliate or third party clearing broker must include these PAB account balances and the omnibus PAB account balance in its PAB reserve computation.

7. Section 240.17a–3 is amended by adding paragraph (a)(23) and to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(23) A record documenting the internal risk management controls established and maintained by the member, broker or dealer to assist it in analyzing and managing the risks associated with its business activities, Provided, That the records required by this paragraph (a)(23) need only be made if the member, broker or dealer has more than:

(i) $1,000,000 in aggregate credit items as computed under § 240.15c3–3a; or

(ii) $20,000,000 in capital, which includes debt subordinated in accordance with § 240.15c3–1d.

* * * * *

8. Section 240.17a–4 is amended by:

a. Removing from paragraph (b)(1) the citation ''§ 240.17a–3(f)'' and its place adding the citation ''§ 240.17a–3(g)'';

b. Removing from paragraph (b)(9) the citation ''§ 240.15c3–3(d)(4)'' and in its place adding the citation ''§ 240.15c3–3(d)(5)''; and

c. Adding paragraph (e)(9).

The addition reads as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(e) * * *

(9) All records required pursuant to paragraph (a)(23) of § 240.17a–3 until three years after the termination of the use of the system of controls or procedures documented therein.

* * * * *

9. Section 240.17a–11 is amended by:

a. Revising the first sentence of paragraph (b)(1);

b. Removing from the introductory text of paragraph (c) the text ''or (c)(4)'' and in its place adding the text ''(c)(4) or (c)(5)''; and

c. Adding paragraph (c)(5).

The revision and addition read as follows:

§ 240.17a–11 Notification provisions for brokers and dealers.

* * * * *

(b)(1) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3–1, or is insolvent as that term is defined in paragraph (c)(16) of § 240.15c3–1, shall give notice of such deficiency that same day in accordance with paragraph (g) of this section. * * *

* * * * *

(c) * * *

(5) If a computation made by a broker or dealer pursuant to § 240.15c3–1 shows that the total amount of money payable against all securities loaned or subject to a repurchase agreement or the total contract value of all securities borrowed or subject to a reverse repurchase agreement is in excess of 2500 percent of its tentative net capital; provided, however, that for purposes of this leverage test transactions involving government securities, as defined in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42), shall be excluded from the calculation; provided further, however, that a broker or dealer shall not be required to send the notice required by this paragraph if it submits a monthly report of its securities lending and borrowing and repurchase and reverse repurchase activity (including the total amount of money payable against securities loaned or subject to a repurchase agreement and the total contract value of securities borrowed or subject to a reverse repurchase agreement) to its designated examining authority.

* * * * *

By the Commission.

Dated: March 9, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–4693 Filed 3–16–07; 8:45 am]

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Monday,
March 19, 2007

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Dual Consolidated Loss Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9315]

RIN 1545–BD10

Dual Consolidated Loss Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1503(d) of the Internal Revenue Code (Code) regarding dual consolidated losses. Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation cannot reduce the taxable income of any other member of the affiliated group unless, to the extent provided in regulations, the loss does not offset the income of any foreign corporation. Similar rules apply to losses of separate units of domestic corporations. These final regulations address various dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

DATES: *Effective Date:* These regulations are effective on March 19, 2007.

Applicability Dates: For dates of applicability see § 1.1503(d)–8.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Cowan, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1946.

The collections of information in these final regulations are in §§ 1.1503(d)–1(c), 1.1503(d)–3(e), 1.1503(d)–4(e), 1.1503(d)–6(c), 1.1503(d)–6(d), 1.1503(d)–6(e), 1.1503(d)–6(f), 1.1503(d)–6(g), 1.1503(d)–6(h), and 1.1503(d)–6(j). This information is required for various reasons. The information under § 1.1503(d)–1(c) notifies the IRS when a taxpayer asserts that it had reasonable cause for failing to comply with certain filing requirements under the regulations. The information under § 1.1503(d)–4(e) indicates when the taxpayer attempts to rebut the amount of presumed tainted income. The information under the other provisions provides the IRS with various information regarding domestic use elections, exceptions to the domestic use limitation, triggering events, new domestic use agreements, original elector statements, annual certifications, and terminations of existing domestic use elections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might 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.

Background

Congress enacted section 1503(d), as part of the Tax Reform Act of 1986, to prevent a dual resident corporation from using a single economic loss once to offset income that was subject to U.S. tax, but not foreign tax, and a second time to offset income subject to foreign tax, but not U.S. tax (double dip). In 1988, Congress extended the application of section 1503(d), by adding section 1503(d)(3) and (4), to apply the provisions to separate units of domestic corporations and to grant the Secretary authority to promulgate regulations to prevent the avoidance of section 1503(d) through the contribution of assets to a corporation with a dual consolidated loss after the loss was sustained. The IRS and Treasury Department issued temporary regulations under section 1503(d) in 1989 (TD 8261, 1989–2 CB 220) and final regulations in 1992 (TD 8434, 1992–2 CB 240), see § 601.601(d)(2)(ii)(*b*). These final regulations were updated and amended over the next 11 years (current regulations).

On May 24, 2005, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG–102144–04; 70 FR 29868). The proposed regulations addressed the following fundamental concerns arising under the current regulations: (1) The potential over- and under-application of the current regulations; (2) various issues arising in the application of the current regulations, particularly in light of the adoption of the entity classification regulations under §§ 301.7701–1 through 301.7701–3 (check-the-box regulations); and (3) the administrative burden of the current regulations. The public hearing with respect to the 2005 proposed regulations was cancelled because no request to speak was received. However, the IRS and Treasury Department received a number of written comments which are discussed in this preamble.

Summary of Comments and Explanation of Provisions

A. Application of Section 1503(d) to Regulated Investment Companies and Real Estate Investment Trusts

Under the current regulations, a dual resident corporation is a domestic corporation that is subject to an income tax of a foreign country on its worldwide income or on a residence basis. As a result, unless specifically exempted, certain entities that are domestic corporations, but not generally taxed at the entity level, may be subject to the current regulations. The current regulations provide that an S corporation, which is a domestic corporation, is not treated as a dual resident corporation. The proposed regulations, and these final regulations, provide that an S corporation is not treated as a domestic corporation and thus cannot be a dual resident corporation or own a separate unit.

Under the current regulations, as a domestic corporation, a regulated investment company (as defined in section 851) or a real estate investment trust (as defined in section 856) could be a dual resident corporation or own a separate unit. In the preamble to the proposed regulations, however, the IRS and Treasury Department requested comments as to whether regulated investment companies or real estate investment trusts should, like S corporations, be excluded from the application of the dual consolidated loss rules. One commentator suggested that regulated investment companies and real estate investment trusts should be subject to the dual consolidated loss rules, but would limit recapture pursuant to a domestic use agreement to situations where there was a foreign use and a section 381 transaction occurred.

The IRS and Treasury Department believe that subjecting regulated investment companies and real estate investment trusts to the dual consolidated loss rules is inappropriate. Section 1503(d) was intended to apply to domestic corporations that are subject to entity-level tax. Although regulated investment companies and real estate investment trusts are domestic corporations under the Code, unlike most domestic corporations these entities often do not pay tax at the entity level because they may deduct the

amount of dividends paid to their shareholders from their own taxable income. Thus, under the final regulations regulated investment companies and real estate investment trusts are excluded from the definition of a domestic corporation and, as a result, are not subject to the dual consolidated loss rules.

B. Separate Units

(1) Separate Unit Combination Rule

Section 1.1503–2(c)(3)(ii) of the current regulations provides that if two or more foreign branches located in the same foreign country are owned by a single domestic corporation and the losses of each branch are available to offset the income of the other branches under the tax laws of the foreign country, then the branches are treated as a single separate unit.

In response to comments that the current combination rule was unnecessarily limited and did not appropriately address the check-the-box regulations, the proposed regulations adopt a broader combination rule that, subject to certain requirements, combines all separate units of a single domestic corporation. One requirement for combining separate units, both under the current regulations and the proposed regulations, is that the losses of each separate unit are made available to offset the income of the other separate units under the tax laws of a single foreign country.

The combination rule in the proposed regulations does not combine dual resident corporations that are members of the same consolidated group, or separate units of multiple domestic corporations that are members of the same consolidated group. However, in the preamble to the proposed regulations, the IRS and Treasury Department requested comments as to whether combination was appropriate in these cases.

Numerous comments were received on the scope and application of the combination rule. Commentators uniformly recommended that the combination rule be expanded to include separate units that are located in or subject to tax in the same foreign country (same-country separate units) and that are owned by multiple domestic corporations that are members of the same consolidated group. The IRS and Treasury Department believe that combining same-country separate units of domestic corporations that are members of the same consolidated group is consistent with the policies underlying section 1503(d) because, in general, all of the items of income, gain, deduction, and loss of such combined separate units are taken into account in both the United States and the foreign country. Therefore, these final regulations expand the combination rule to apply to same-country separate units of multiple domestic corporations that are members of the same consolidated group.

Two commentators recommended that the combination rule be expanded to combine dual resident corporations that are members of the same consolidated group. The IRS and Treasury Department do not believe that Congress intended that multiple dual resident corporations be treated as a single domestic corporation for purposes of section 1503(d). Combining dual resident corporations and separate units would also add complexity because certain rules apply differently to dual resident corporations and separate units. As a result, the combination rule in these final regulations does not apply to dual resident corporations.

Nevertheless, it is important to note that a dual resident corporation will often carry on its activities through a foreign branch (as defined in § 1.367(a)–6T(g)(1)) and, as a result, will be a domestic owner of a foreign branch separate unit. In these cases, the foreign branch separate unit through which it carries on its activities in the foreign country will be eligible for combination. In addition, in many cases, a significant number of the items of income, gain, deduction, and loss of a dual resident corporation that owns a foreign branch separate unit will be attributable to the foreign branch separate unit (and therefore will not be items of the dual resident corporation itself). As a result, not extending the combination rule to dual resident corporations should, as a practical matter, have limited effect.

One commentator recommended eliminating the proposed regulations' requirement that losses of each separate unit must be available to offset the income of other separate units under the tax laws of a single foreign country in order for them to combine. The IRS and Treasury Department believe that it is appropriate to remove this requirement, provided that the individual separate units are located, or subject to income tax on a worldwide or residence basis, in the same foreign country. This is the case because it is likely that all of the items of the combined separate unit will be recognized in both the United States and the foreign jurisdiction, without regard to whether such items are available for offset under the income tax laws of the foreign country. In addition, the IRS and Treasury Department believe that eliminating this requirement will reduce complexity, and will further refine the application of the rules. As a result, these final regulations eliminate this requirement from the combination rule.

Commentators also recommended making combination elective in certain situations. The IRS and Treasury Department believe that elective combination would add complexity and create administrative burdens. Therefore, this comment is not adopted.

The IRS and Treasury Department recognize that the expanded combination rule may necessitate that the basis of the stock of multiple domestic corporations, which are members of the same consolidated group, be adjusted to reflect the items of income, gain, deduction, and loss entering into the computation of the dual consolidated loss of a combined separate unit. These regulations provide guidance on the manner of such basis adjustments.

These final regulations also clarify that the separate unit combination rule generally applies for all purposes of section 1503(d). As a result, except as specifically provided in these regulations, any individual separate unit composing a combined separate unit loses its character as an individual separate unit. For example, in determining whether there is a triggering event as a result of the transfer of the assets of a combined separate unit, all of the assets of the combined separate unit are taken into account (rather than only the assets of any individual separate unit within the combined separate unit).

(2) Definition of a Foreign Branch by Reference to § 1.367(a)–6T(g)

One commentator stated that the reference in the current and proposed regulations to § 1.367(a)–6T(g) for the definition of a foreign branch, which implicitly includes references to § 1.367(a)–6T(g)(1) through (3), creates needless complexity. The IRS and Treasury Department generally agree with this comment. Accordingly, these final regulations clarify that a foreign branch is defined, in part, by reference to § 1.367(a)–6T(g)(1), rather than by reference to § 1.367(a)–6T(g).

(3) Treaty Exception to the Definition of a Foreign Branch Separate Unit

One commentator suggested that the definition of a foreign branch separate unit should not include a branch that would not be subject to income tax in a foreign jurisdiction either as a result of an income tax convention or because of the passive nature of the activities.

This commentator explained that such an exclusion is appropriate because in these cases there would be no potential use of a branch loss for foreign tax purposes.

The IRS and Treasury Department agree that it is appropriate to exclude from the definition of a foreign branch separate unit certain business operations that, under an applicable income tax convention, would not be considered a permanent establishment. As a result, these final regulations include an exception to the definition of a foreign branch separate unit. The IRS and Treasury Department do not, however, believe an exception is appropriate where the business operations are not subject to tax in the foreign jurisdiction because of the passive nature of the activities. Such an exception would require the analysis of foreign law which, to the extent possible, should not be required under these rules.

(4) Activities Owned by a Dual Resident Corporation or a Hybrid Entity

One commentator requested clarification that home-country activities of a dual resident corporation or hybrid entity separate unit can qualify as a foreign branch separate unit. The IRS and Treasury Department agree that this clarification is warranted and these final regulations are modified accordingly.

C. Elimination of the Consistency Rule

As a result of the expansion of the separate unit combination rule in these final regulations, the IRS and Treasury Department believe that the consistency rule would have only limited application. Therefore, the consistency rule has been eliminated from these final regulations. The IRS and Treasury Department believe that eliminating the consistency rule will simplify the application of the dual consolidated rules and will eliminate various issues that arise under the rule.

D. Domestic Reverse Hybrid Entities

One commentator noted that the application of the current and proposed regulations to certain structures involving domestic reverse hybrid entities appears inconsistent with the underlying policies of section 1503(d). In a typical structure, a foreign corporation owns the majority of the interests in a partnership or limited liability company that elects to be treated as a corporation for U.S. tax purposes and, therefore, is subject to tax on its worldwide income in the United States, but is treated as a pass-through entity under foreign law (domestic reverse hybrid). The domestic reverse hybrid is the parent of a consolidated group, is the obligor on group indebtedness, and holds stock of other group members. This structure allows the interest expense of the domestic reverse hybrid to offset income of the foreign corporation, which is not subject to U.S. tax, and to offset income of the other members of the consolidated group, which is not subject to foreign tax.

The commentator noted that because the domestic reverse hybrid is neither a dual resident corporation (because it is not subject to tax on a residence basis or on its worldwide income in the foreign country, but is instead treated as a pass-through entity) nor a separate unit of a domestic corporation, the current and proposed regulations do not apply to the losses of the domestic reverse hybrid. The commentator asserted that this result is inconsistent with the policies underlying section 1503(d), which was adopted, in part, to ensure that domestic corporations were not put at a competitive disadvantage as compared to foreign corporations through the use of certain inbound acquisition structures. See S. Rep. No. 99–313, 1986–3 CB Vol. 3 at 420, see § 601.601(d)(2)(ii)(*b*). The commentator suggested that the scope of the final regulations be broadened to treat such entities as separate units, the losses of which are subject to the restrictions of section 1503(d). This change would, in effect, apply the provisions of section 1503(d) to a separate unit of a foreign corporation.

The IRS and Treasury Department recognize that this type of structure results in a double dip similar to that which Congress intended to prevent through the adoption of section 1503(d). However, the IRS and Treasury Department believe that a domestic reverse hybrid is neither a dual resident corporation nor a separate unit and, therefore, is not subject to section 1503(d). As a result, this comment is not adopted. However, the IRS and Treasury Department continue to study these and similar structures.

E. Transparent Entities

Section 1.1503–2(c)(3) and 1.1503–2(c)(4) of the current regulations define a separate unit of a domestic corporation as a foreign branch (within the meaning of § 1.367(a)–6T(g)), and an interest in a partnership, trust, or hybrid entity. As a result, the current regulations potentially apply not only to entities that are subject to tax in a foreign country (for example, hybrid entities), but also to entities that are not subject to tax in a foreign country, and otherwise have no connection to a foreign jurisdiction (for example, a domestic partnership engaged in a U.S. trade or business).

The proposed regulations modify the definition of a separate unit to exclude interests in non-hybrid entity partnerships and non-hybrid entity grantor trusts. These interests were excluded because the IRS and Treasury Department believe that it is unlikely that losses and deductions attributable to these interests could be put to a foreign use (as that term is defined in the proposed regulations). However, the proposed regulations retain the rule that a domestic corporation can own a separate unit through a non-hybrid entity partnership or non-hybrid entity grantor trust.

Commentators noted that, as a result of this change, the proposed regulations may not sufficiently and consistently address the treatment of certain entities. Such an entity is a pass-through entity for U.S. tax purposes (for example, a disregarded entity, a partnership or a grantor trust), but is not a hybrid entity because it is not subject to tax on its worldwide income or on a residence basis in a foreign country. In addition, the entity would not be treated as a pass-through entity under the laws of the applicable foreign country. One example of such an entity (transparent entity) is a limited liability company organized in the United States that for U.S. tax purposes is a partnership or disregarded entity, but, for purposes of the applicable foreign country, is not viewed as a pass-through entity. Another example is a foreign entity that is a pass-through entity for U.S. tax purposes, is not subject to income tax in a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis (because, for example, it is organized in a foreign country that does not impose an income tax), and is not treated as a pass-through entity under the laws of the applicable foreign country.

The commentators noted that under the proposed regulations items of income, gain, deduction, and loss of a transparent entity that is a partnership for U.S. tax purposes would be taken into account in computing the dual consolidated loss of a dual resident corporation or hybrid entity separate unit that owns an interest in such entity, even though it is unlikely that the items are taken into account by the jurisdiction in which the dual resident corporation or hybrid entity is subject to tax. As a result, items of deduction or loss which are unlikely to be available for a double dip (because they are not

taken into account by the foreign country in which the dual resident corporation or hybrid entity is subject to tax) could inappropriately result in a dual consolidated loss. The commentators further noted that items of income or gain which are unlikely to be taken into account by the foreign country could inappropriately reduce (or eliminate) a dual consolidated loss of the dual resident corporation or hybrid entity separate unit that owns an interest in such entity.

The IRS and Treasury Department believe that losses attributable to interests in transparent entities should not be subject to section 1503(d), but also believe that items attributable to these interests should not influence the calculation or use of a dual consolidated loss of a dual resident corporation or separate unit in a manner that is inconsistent with the purposes of section 1503(d). Accordingly, these final regulations provide four new rules that address transparent entities (and interests therein).

First, these final regulations provide a definition of a transparent entity that is consistent with the description and examples in the preceding discussion.

Second, rules are provided for attributing items of income, gain, deduction, and loss to interests in transparent entities. The rules applicable for attributing items to these interests are consistent with the rules for attributing items to hybrid entity separate units.

Third, these final regulations provide that items of income, gain, deduction, and loss attributable to interests in transparent entities are not considered when calculating whether a dual resident corporation that holds an interest in such entity has income or a dual consolidated loss. This modification ensures that in cases where the foreign country in which the dual resident corporation is subject to tax is unlikely to take into account items of the transparent entity, such items do not inappropriately affect the computation of income or a dual consolidated loss of the dual resident corporation. Similar rules apply for purposes of calculating the income or dual consolidated loss of a separate unit through which an interest in a transparent entity is owned (directly or indirectly).

Finally, an interest in a transparent entity will be treated as a domestic affiliate for purposes of determining whether there is a domestic use of a dual consolidated loss. This change prevents a dual consolidated loss from being used to offset the income of a transparent entity such that there is no inappropriate domestic use of the loss.

These final regulations do not treat transparent entities, or interests therein, as dual resident corporations or separate units and, as a result, do not cause such entities (or interests therein) to be subject to the limitations of section 1503(d). Instead, the rules aim to appropriately take into account such entities when applying the dual consolidated loss rules to dual resident corporations and separate units.

F. Reasonable Cause Exception

The current regulations require various filings to be included on a timely filed income tax return. In addition, taxpayers that fail to include these filings must request an extension of time to file under §§ 301.9100–1 through 301.9100–3. The proposed regulations eliminate the requirement that a taxpayer obtain an extension of time under §§ 301.9100–1 through 301.9100–3 and instead adopt a reasonable cause standard.

On January 31, 2006, the IRS and Treasury Department published Notice 2006–13 (2006–8 IRB 496), see § 601.601(d)(2)(ii)(*b*), announcing that taxpayers that must file agreements, statements, and other information under section 1503(d) may cure any late filings by applying a reasonable cause exception similar to the standard contained in the proposed regulations, until such time as the proposed regulations become final. In addition to allowing the use of the reasonable cause exception prior to the proposed regulations being published as final regulations in the **Federal Register**, the notice modifies the procedures for obtaining reasonable cause relief to ensure that requests for reasonable cause relief are handled in a timely and efficient manner.

These final regulations adopt the reasonable cause standard contained in the proposed regulations and Notice 2006–13, with certain modifications. See paragraph S(3) of this preamble for the application of the reasonable cause exception to losses that are subject to the current regulations.

G. Foreign Use

(1) In General

Section 1.1503–2(g)(2)(i) of the current regulations provides that, in order to elect relief from the general limitation on the use of a dual consolidated loss to offset income of a domestic affiliate ((g)(2)(i) election), the taxpayer must, among other things, certify that no portion of the losses, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country. If, contrary to this certification, there is such a use, the dual consolidated loss subject to the (g)(2)(i) election generally must be recaptured and reported as gross income.

The proposed regulations modify the definition of ''use'' and provide a rule based on ''foreign use'' in order to minimize the potential over- and under-application of the current regulations. The proposed regulations provide that a foreign use is deemed to occur only if two conditions are satisfied. The first condition is satisfied if any portion of a deduction or loss taken into account in computing the dual consolidated loss is made available under the income tax laws of a foreign country to offset or reduce, directly or indirectly, any item that is recognized as income or gain under such laws (including items of income or gain generated by the dual resident corporation or separate unit itself), regardless of whether income or gain is actually offset, and regardless of whether these items are recognized under U.S. tax principles. The second condition is satisfied if items that are (or could be) offset pursuant to the first condition are considered, under U.S. tax principles, to be items of: (1) A foreign corporation; or (2) a direct or indirect (for example, through a partnership) owner of an interest in a hybrid entity, provided such interest is not a separate unit.

(2) Indirect Foreign Use

As noted, the proposed regulations provide that a foreign use of a dual consolidated loss will occur when any item of deduction or loss, entering into the computation of the dual consolidated loss, is made available, directly or indirectly, to offset under foreign law, income of a foreign corporation or an owner of an interest in a hybrid entity that is not a separate unit. The proposed regulations do not provide comprehensive examples illustrating when an indirect use of a dual consolidated loss occurs. However, the provision was included in the proposed regulations to address transactions that are structured to avoid the application of section 1503(d) through, for example, the use of a back-to-back lending or conduit financing-type arrangements, or through the use of one or more hybrid instruments.

Commentators requested additional guidance regarding an indirect foreign use. In response to these comments, these final regulations clarify when an

indirect foreign use is deemed to occur, include an exception to the general indirect foreign use rule for certain ordinary course transactions, and provide related examples.

The indirect foreign use rules are designed to limit an indirect use to situations in which taxpayers have engaged in transactions which have the effect of transferring an item of deduction or loss composing a dual consolidated loss to another entity for foreign tax purposes, so that it is made available to offset the income of a foreign corporation or the owner of an interest in an entity which is not a separate unit. In general, these rules are intended to target structured transactions that are designed to achieve a double dip that is contrary to the policies of section 1503(d), and are not intended to apply to ordinary business transactions.

(3) Exceptions to Foreign Use

The proposed regulations contain three exceptions to the definition of a foreign use, including an exception where there is no dilution of an interest in a separate unit. In the preamble to the proposed regulations, the IRS and Treasury Department request comments as to whether a de minimis exception should be provided to the dilution limitation. The preamble also states that a revenue procedure would be issued, in conjunction with the proposed regulations being published as final regulations in the **Federal Register**, that would provide additional exceptions (safe harbors) under which a triggering event would be deemed rebutted if various conditions were satisfied, including, in certain cases, a demonstration that there can be no foreign use of a significant portion of the dual consolidated loss.

The IRS and Treasury Department received a number of comments on transactions and situations that could be included in the list of safe harbors. One commentator suggested an exception whereby recapture would not be required following transactions outside the taxpayer's control. For example, this commentator suggested that a recapture of a dual consolidated loss should not occur following the conveyance or relinquishment of assets of a separate unit, or interests in a separate unit, to a foreign government.

Commentators also suggested that relief should be provided following certain transactions, similar to those mentioned in the preamble to the proposed regulations, where there is a de minimis potential for foreign use, a de minimis carryover of asset basis, and for which rebuttal would otherwise be difficult or impossible. According to these commentators, this safe harbor would apply to many common business transactions in which the policies underlying section 1503(d) would not be violated because of only a de minimis potential for foreign use.

Another commentator stated that an exception to foreign use would be appropriate where the taxpayer enters into a binding and irrevocable agreement with the tax authorities of a foreign country which ensures that no portion of the dual consolidated loss can be put to a foreign use in the foreign country. The commentator explained that, pursuant to such an arrangement, the taxpayer and the foreign tax authorities would agree that the foreign tax attributes of a dual resident corporation or separate unit (for example, loss carryforwards and asset basis) would be eliminated such that there would be no opportunity for a foreign use.

After considering these comments, the IRS and Treasury Department believe that it is appropriate to include certain safe harbors where a foreign use will be deemed not to occur. As a result, these final regulations (rather than a revenue procedure) set forth additional exceptions to the definition of a foreign use. These exceptions generally apply in cases where the potential for foreign use is de minimis, or where the transaction giving rise to a foreign use occurs as a result of events largely outside of the taxpayer's control.

These new exceptions to foreign use include a de minimis rule and rules that apply to certain transactions involving the carry over of asset basis and the assumption of liabilities. Another new exception applies to a transaction that qualifies for the multiple-party event exception to a triggering event (referred to as successor elector events under the proposed regulations) where the acquiring unaffiliated domestic owner or consolidated group owns, immediately after the transaction, less than 100 percent of the acquired assets or interests. Without this exception to foreign use, many transactions that would qualify for the multiple-party event exception would immediately result in a foreign use triggering event when the unaffiliated domestic corporation or consolidated group acquires between 90 and 100 percent of the assets or interests. Finally, these regulations modify the ''no dilution'' exception contained in the proposed regulations to, among other things, incorporate a de minimis exception.

These final regulations provide that the exceptions may be supplemented through subsequent guidance published in the Internal Revenue Bulletin, as appropriate. As a result, the IRS and Treasury Department request comments on additional transactions or situations that should be added as safe harbors. For example, additional comments are requested on arrangements with foreign tax authorities whereby foreign tax attributes could be eliminated to ensure that no portion of the dual consolidated loss can be put to a foreign use.

(4) Ordering Rules for Determining a Foreign Use

The current and proposed regulations provide rules for determining the order in which dual consolidated losses are used in cases where the laws of a foreign country provide for the foreign use of such loss, but do not provide applicable rules for determining the order in which these losses are used in a taxable year.

A commentator noted that in certain cases involving dual consolidated losses incurred in different taxable years, the ordering rules may result in losses being deemed to be made available for a foreign use resulting in recapture, even though there are other losses which, if deemed to be used, would not result in recapture. This commentator recommended that in these situations the losses be deemed to first be used in a manner that will not result in the recapture of a dual consolidated loss. The commentator also noted that this approach is consistent with the exception to foreign use contained in § 1.1503(d)–1(b)(14)(iii)(B) of the proposed regulations where there is no foreign country rule for determining use. Finally, the commentator stated that losses that do give rise to a foreign use should be deemed to be used on a ''last-in/first-out'' basis. The IRS and Treasury Department believe these rules are appropriate and, as a result, these comments are adopted.

(5) Mirror Legislation

The current regulations contain a mirror legislation rule that denies a taxpayer the ability to make an election to use a dual consolidated loss to offset the income of a domestic affiliate where the foreign country has enacted legislation that operates in a manner similar to section 1503(d), and, as a result, prohibits the taxpayer from claiming the dual consolidated loss in the foreign country. The mirror legislation rule was designed to prevent the revenue gain resulting from the disallowance of a double dip from inuring solely to the foreign country. Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986, at 1065–66 (J.

Comm. Print 1987), see § 601.601(d)(2)(ii)(*b*); see also *British Car Auctions, Inc.* v. *United States*, 35 Fed. Cl. 123 (1996), *aff'd without op.*, 116 F.3d 1497 (Fed. Cir. 1997) (upholding the validity of the mirror legislation rule). The effect of the mirror legislation rule is that a dual consolidated loss may be disallowed in the United States and in the foreign country. In such cases, Congress intended for the Treasury Department to pursue a bilateral agreement with the foreign jurisdiction so that the loss could offset income of an affiliate in only one country.

The proposed regulations retain the mirror legislation rule and modify it to better take into account the policies underlying its adoption.

A number of comments were received on the scope and utility of the mirror legislation rule. Several commentators encouraged the IRS and the Treasury Department to pursue bilateral agreements where the dual consolidated loss is disallowed in both the United States and the foreign country.

The IRS and Treasury Department agree that such agreements are necessary and recently concluded a competent authority agreement on such matters with the United Kingdom on October 6, 2006 (the Agreement). For the text of the Agreement, see Announcement 2006–86, 2006–45 IRB 842; see § 601.601(d)(2)(ii)(*b*). The Agreement applies to dual consolidated losses attributable to certain UK permanent establishments that are otherwise subject to both section 1503(d) and mirror legislation enacted by the United Kingdom. In general, the Agreement provides that taxpayers can elect to use or relieve the loss in either the United Kingdom or the United States, but not both.

The IRS and Treasury Department believe that these final regulations and the Agreement appropriately refine and limit the scope of the mirror rule. In addition, the IRS and Treasury Department believe that the provisions of the Agreement can serve as a model for future competent authority agreements, if necessary, between the United States and its treaty partners which would further the Congressional intent with respect to the application of the mirror legislation rule. Accordingly, comments are requested on the provisions of the Agreement and on specific jurisdictions and considerations that should be taken into account in future agreements.

Commentators also suggested that a ''stand-alone'' exception to the mirror legislation rule be adopted. This exception would apply where filing a domestic use election with respect to a dual consolidated loss otherwise subject to the mirror legislation rule would not violate the policies of section 1503(d). According to the commentators, this is the case because the mirror legislation in the foreign country would not have the effect of forcing taxpayers to use the losses in the United States. The commentators suggested that the mirror legislation rule would not apply provided there is not a foreign affiliate to which the separate unit or dual resident corporation could put the dual consolidated loss to a foreign use. The commentators noted that in these situations, the mirror legislation does not result in the revenue loss inuring solely to the United States, because it is factually impossible for the loss to offset taxable income in the foreign country that is not also taken into account in the United States.

The IRS and Treasury Department generally agree with this comment. As a result, these final regulations contain a stand-alone exception to the mirror legislation rule.

H. Elimination of a Dual Consolidated Loss After Certain Transactions

Both the current and proposed regulations contain rules that eliminate a dual consolidated loss that is subject to the general restrictions under section 1503(d)(1) following certain transactions. In the case of a dual resident corporation, the dual consolidated loss is generally eliminated in transactions described in section 381(a) because the dual resident corporation ceases to exist. In the case of a separate unit, the dual consolidated loss is generally eliminated in transactions where the separate unit ceases to be a separate unit of its domestic owner (either through a transaction described in section 381(a) or otherwise). In these cases, and subject to the exceptions discussed in this preamble, after the transaction it is no longer possible for the dual resident corporation or separate unit to generate income that can be offset by the dual consolidated loss. As a result, any unused dual consolidated loss is eliminated.

Both the current and the proposed regulations provide exceptions to the general elimination rule in the case of certain transactions to which section 381(a) applies. These exceptions generally apply in cases where it is possible that income that is generated by the transferee corporation after the transaction is subject to tax in both the United States and the foreign country such that it is appropriate for the income to be offset by the dual consolidated loss that carries over to the transferee.

These final regulations make certain modifications to the elimination rules. For example, the rules are modified to reflect the expansion of the separate unit combination rule. Thus, these final regulations take into account transactions involving combined separate units that have more than one domestic owner. For example, a dual consolidated loss of a domestic owner that is attributable to a separate unit will not be eliminated under these final regulations if the separate unit continues to be a separate unit of any member of its domestic owner's consolidated group.

I. Application of SRLY Limitation to a Former Dual Resident Corporation

Section 1.1503(d)–3(c)(3) of the proposed regulations provides that a dual consolidated loss is treated as a loss incurred by a dual resident corporation or separate unit in a separate return limitation year (SRLY) and is generally subject to all the limitations of § 1.1502–21(c). The proposed regulations provide that when determining the general SRLY limitation with respect to a dual resident corporation, the calculation of aggregate consolidated taxable income only includes income, gain, deduction, and loss generated in years in which the dual resident corporation is a resident (or is taxed on its worldwide income) in the same foreign country in which it was a resident (or was taxed on its worldwide income) during the year in which the dual consolidated loss was generated. See proposed § 1.1503(d)–3(c)(3)(iii).

One commentator noted that this rule prevents the dual consolidated loss of a dual resident corporation from being taken into account by its consolidated group after the dual resident corporation ceases to be subject to tax on a residence basis (or on its worldwide income), regardless of whether the former dual resident corporation contributes taxable income to the consolidated taxable income of the group. The commentator stated that this result is inappropriate because it does not merely limit the use of a dual consolidated loss from offsetting the income of a domestic affiliate, but has the effect of limiting the use of a dual consolidated loss from offsetting the domestic corporation's own taxable income.

The IRS and Treasury Department agree with this comment. Section 1503(d)(1) provides that a dual consolidated loss of a corporation shall not reduce the taxable income of any other member of the affiliated group for

the taxable year or for any other taxable year. However, the limitations of section 1503(d)(1) do not prevent the use of a dual consolidated loss to offset the income of the dual resident corporation that incurred the loss, even where the dual resident corporation ceases to be subject to tax in the foreign country. As a result, this rule is not contained in these final regulations. But see section 1503(d)(4) (relating to tainted assets contributed to a dual resident corporation).

J. Effect of Section 1503(d) on Foreign Tax Credits

Section 1503(d)(2) generally defines a dual consolidated loss to mean any net operating loss of a dual resident corporation or a separate unit. Section 172(c) generally defines a net operating loss as the excess of deductions over gross income. Section 164(a)(3) generally provides that foreign taxes are allowed as a deduction for the taxable year in which paid or accrued. However, section 275(a)(4) provides that no deduction is allowed for any such taxes, to the extent the taxpayer chooses to take to any extent the benefits of section 901 (which permits taxpayers to claim a credit for certain taxes paid or accrued during the taxable year to any foreign country or any possession of the United States).

Commentators asked whether a creditable foreign tax expenditure incurred by a dual resident corporation or separate unit, for which an election is made to claim a credit pursuant to section 901, may be subject to the limitations of section 1503(d)(1).

The IRS and Treasury Department recognize that policy concerns arise in certain transactions in which two or more parties claim a credit for the same foreign taxes. Although these policy concerns are similar to those arising under section 1503(d), the IRS and Treasury Department do not believe that Congress intended the limitations of section 1503(d) to apply to foreign taxes, so long as the foreign taxes do not enter into the computation of a net operating loss (that is, so long as an election is made to claim a credit for such taxes, in lieu of deducting them). As a result, under the terms of the statute, the limitations of section 1503(d) do not apply to creditable foreign tax expenditures incurred by a dual resident corporation or a separate unit, provided an election is made to claim a credit with respect to such expenditures in accordance with section 901 and the related regulations.

Even though section 1503(d) does not apply to foreign tax credits that are claimed by more than one person, the IRS and Treasury Department continue to study these transactions and, as appropriate, intend to address them in future published guidance under other provisions.

K. Tainted Income Rule

Section 1503(d)(4) grants the Secretary authority to prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of section 1503(d) by contributing assets to the corporation with the dual consolidated loss after such loss is incurred. Section 1.1503–2(e) of the current regulations prevents the dual consolidated loss of a dual resident corporation that ceases being a dual resident corporation from offsetting the income from assets that are acquired by the dual resident corporation in a nonrecognition transaction, or as a contribution to capital, at any time during the three taxable years immediately preceding the taxable year in which the corporation ceases to be a dual resident corporation, or any time thereafter. The proposed regulations retained the tainted income rule, with certain modifications.

One commentator noted that the tainted income rule of the current and proposed regulations applies with respect to assets acquired by a dual resident corporation, regardless of whether such tainted assets were received from a member of the dual resident corporation's affiliated group. According to this commentator, because section 1503(d) was intended to prevent the use of a dual consolidated loss from offsetting the taxable income of any other member of the affiliated group, applying the tainted income rule where the tainted assets were not received from a member of the dual resident corporation's affiliated group is inconsistent with the policies underlying section 1503(d).

Section 1503(d)(4) grants the Secretary broad regulatory authority to implement the tainted income rule. In addition, the IRS and Treasury Department believe that adopting the rule suggested by the commentator would require the IRS to trace the source of tainted assets received (for example, to ensure that the rule cannot be avoided through the imposition of an intermediary entity, such as a partnership, or through indirect transfers of assets). Moreover, such a rule would be difficult for both taxpayers and the IRS to apply, and would increase complexity. Accordingly, the IRS and Treasury Department believe that the tainted income rule should continue to apply without regard to the source of the tainted assets. As a result, this comment is not adopted.

L. Items Taken Into Account in Computing Income or a Dual Consolidated Loss

(1) In General

Section 1503(d)(2)(A) generally defines a dual consolidated loss to mean any net operating loss of a domestic corporation which is subject to an income tax of a foreign country on its income without regard to whether such income is from sources inside or outside such foreign country, or is subject to such a tax on a residence basis. Section 1503(d)(3) grants the Secretary broad authority to subject any loss of a separate unit of a domestic corporation to the limitations of section 1503(d). Because separate units are not themselves taxpayers, it is necessary to determine which items of income, gain, deduction, and loss of the domestic owner of the separate unit should be taken into account for purposes of calculating a dual consolidated loss.

Section 1.1503–2(d)(1)(ii) of the current regulations provides a limited rule for attributing items of a domestic owner to a separate unit. Under this rule, a separate unit must compute its income as if it were a separate domestic corporation that is a dual resident corporation, using only those items of income, expense, deduction, and loss that are otherwise attributable to such separate unit. For this purpose, only items of the domestic owner that are recognized for U.S. tax purposes are taken into account.

In response to requests for additional guidance in this area, the proposed regulations provide more detailed rules for determining the amount of income or dual consolidated loss of a separate unit. This determination depends on various factors, including the type of separate unit, the ownership structure, and the nature of the item. The determination generally turns on whether it is likely that the relevant foreign country would take into account the item (assuming the item is recognized) for tax purposes. This determination is solely for purposes of section 1503(d) and does not apply for any other purpose, such as attributing items under an applicable income tax treaty or under other Code sections such as section 884 or 987.

These final regulations adopt the attribution rules contained in the proposed regulations, with modifications.

(2) Books and Records

The proposed regulations provide that, in general, the items of income, gain, deduction, and loss that are attributable to a hybrid entity (and, therefore, attributable to interests in the hybrid entity) are those that are properly reflected on its books and records, as adjusted to conform to U.S. tax principles. The proposed regulations further provide that the principles of § 1.988–4(b)(2) apply for purposes of making this determination.

One commentator asked whether § 1.988–4(b)(2) is a strict booking rule, or whether it would instead permit taxpayers to take positions contrary to how items are reflected on the books and records if, under the facts and circumstances, the items were not appropriately reflected on the books and records. Another commentator stated that the clause ''to the extent consistent with U.S. tax principles'' in the proposed regulations created uncertainty.

In response to these comments, the final regulations clarify that only the Commissioner, and not the taxpayer, may make adjustments to the books and records where the booking practices are employed with a principle purpose of avoiding the principles of section 1503(d), including inconsistently treating the same or similar items of income, gain, deduction, and loss. In addition, these final regulations clarify that, in general, a domestic owner's items of income, gain, deduction, and loss are attributable to the domestic owner's hybrid entity separate unit, or interest in a transparent entity, to the extent such items are reflected on the hybrid entity or transparent entity's books and records (as defined in § 1.989(a)–1(d)), as adjusted to conform to U.S. tax principles.

The books and records standard set forth in these final regulations is intended to be consistent with the more detailed approach for attributing items that was adopted in proposed § 1.987–2(b) that was published on September 7, 2006 (REG–208270–86, 71 FR 52875). It is anticipated that when those regulations are published as final regulations in the **Federal Register**, that approach will, as appropriate, be incorporated into these regulations. The IRS and Treasury Department believe that applying consistent standards under these two provisions, where appropriate, would make the rules more administrable. Comments are requested as to whether the standard contained in the section 987 proposed regulations is appropriate for purposes of section 1503(d).

(3) Attributing Interest Expense Under the Principles of § 1.882–5

The proposed regulations provide that the principles of § 1.882–5, as modified, apply for purposes of determining the interest expense that is attributable to a foreign branch separate unit. In making this determination, and solely for this purpose, the domestic owner is treated as a foreign corporation, the foreign branch separate unit is treated as a trade or business within the United States, and assets other than those of the foreign branch separate unit are treated as assets that are not U.S. assets.

Two comments were received on the application of this rule. First, commentators stated that adopting the principles of § 1.882–5 results in unnecessary complexity. These commentators suggested that, in lieu of using the principles of § 1.882–5, the interest expense of a foreign branch separate unit be determined by reference to its books and records. Another commentator noted the rationale of using the principles of § 1.882–5 as a general matter, but suggested that where the foreign country looks to the books and records of the foreign branch separate unit for purposes of computing the interest expense of the separate unit, it would be appropriate to use the books and records for purposes of section 1503(d).

The IRS and Treasury Department continue to believe that the principles of § 1.882–5, as modified, serve as a reasonable proxy for determining the items of interest expense recognized for U.S. tax purposes that, if recognized by the foreign country, would be taken into account by the foreign country. Therefore, the principles of § 1.882–5, as modified, are retained as the general rule for purposes of determining the interest expense that is attributable to a foreign branch separate unit.

However, to minimize complexity, the IRS and Treasury Department believe it is appropriate to use a books and records approach, where possible. Therefore, these final regulations provide an exception to the general rule such that interest expense is attributable to a foreign branch separate unit to the extent it is reflected on its books and records. This exception only applies if the foreign country in which the foreign branch is located determines, for purposes of computing the taxable income (or loss) under the laws of the foreign country, the interest expense of the foreign branch separate unit by taking into account only the items of interest expense reflected on the foreign branch separate unit's books and records. This rule will not apply, however, in cases where the foreign country does not use a strict booking approach for interest expense.

Finally, it is important to note that in all cases only items of interest expense, as determined for U.S. tax purposes, are taken into account. The treatment of interest expense in the foreign country is only relevant for purposes of determining the method under which items of interest expense (determined for U.S. tax purposes) is attributed to the foreign branch separate unit.

(4) Treaty-Based Methods

The proposed regulations provide that for purposes of determining the items of income, gain, deduction (other than interest), and loss that are taken into account in determining the taxable income or loss of a foreign branch separate unit, the principles of sections 864(c)(2) and (c)(4) as set forth in §§ 1.864–4(c) and 1.864–6 shall apply.

One commentator stated that domestic corporations operating foreign branch separate units should be allowed to attribute items to the foreign branch separate unit based on the method provided under an income tax treaty between the United States and the foreign country (or between two foreign countries if foreign branch operations are conducted by a hybrid entity outside its home country). The IRS and Treasury Department believe that this approach is inappropriate for two reasons. First, it would have the effect of attributing items recognized by the foreign jurisdiction, which may not be recognized as items for U.S. tax purposes. This would be inconsistent with section 1503(d), which defines a dual consolidated loss solely based on U.S. tax rules. Second, this approach would require the interpretation of foreign law, which the IRS and Treasury Department believe should be avoided, to the extent possible. Accordingly, this comment is not adopted.

(5) Gain or Loss Recognized Under Section 987

The proposed regulations do not provide whether gain or loss of a domestic owner recognized under section 987 as a result of a remittance or transfer is attributable to a separate unit for purposes of calculating income or dual consolidated loss, but instead request comments.

Commentators stated that gain or loss recognized under section 987 should not be attributable to a separate unit because in most cases the foreign country would not recognize such items since the income of the separate unit will be computed in the local currency. The IRS and Treasury Department agree

with this comment. As a result, these final regulations provide that gain or loss recognized under section 987, as a result of a remittance or transfer, will not be taken into account for purposes of computing the income or dual consolidated loss of a separate unit.

(6) Attributable To or Taken Into Account

The proposed regulations generally provide that items are attributable to a hybrid entity separate unit, but are taken into account by a foreign branch separate unit. The IRS and Treasury Department believe that the use of these different terms is unnecessary and may lead to confusion. As a result, these final regulations provide that items are attributable to a separate unit, regardless of whether the separate unit is a foreign branch separate unit or a hybrid entity separate unit.

M. Basis Adjustments

Section 1.1503–2(d)(3) of the current regulations contains special basis adjustment rules that override the normal investment adjustment rules under § 1.1502–32 for stock of affiliated dual resident corporations and affiliated domestic owners owned by other members of the consolidated group. Similar rules apply to separate units arising from the ownership of an interest in a partnership. These special basis adjustment rules were included in the current regulations to prevent the indirect deduction of a dual consolidated loss. Although the proposed regulations retain these rules, the IRS and Treasury Department requested comments on whether the special basis adjustment rules should be retained.

A number of commentators recommended that the special basis adjustment rules be removed for several reasons. For example, the commentators noted that an indirect use, which the special basis rules were intended to prevent, may not occur for many years after the dual consolidated loss was incurred. In response to these comments, the special basis rules are not contained in these final regulations. Thus, the basis adjustment rules under § 1.1502–32 shall apply without modification for purposes of determining the adjusted basis in the stock of a dual resident corporation or the stock of an affiliated domestic owner owned by other members of the consolidated group. These final regulations also contain rules to ensure consistent treatment for a partner's basis in a partnership interest that is a separate unit, or through which a separate unit is owned indirectly.

N. Losses of a Foreign Insurance Company Treated as a Domestic Corporation

(1) In General

Section 953(d) generally provides that a foreign corporation that would qualify to be taxed as an insurance company if it were a domestic corporation may, under certain circumstances, elect to be treated as a domestic corporation (section 953(d) company). Section 953(d)(3) provides that if a section 953(d) company is treated as a member of an affiliated group, any loss of such corporation is treated as a dual consolidated loss for purposes of section 1503(d), without regard to section 1503(d)(2)(B) (grant of regulatory authority to exclude losses which do not offset the income of foreign corporations from the definition of a dual consolidated loss).

The current regulations do not address the application of section 953(d)(3). In the proposed regulations, however, the definition of a dual resident corporation includes a section 953(d) company that is a member of an affiliated group. In addition, the proposed regulations clarify that a section 953(d) company may not make a domestic use election. These rules are consistent with section 953(d)(3).

In response to comments, these final regulations provide additional guidance on the application of the dual consolidated loss rules to section 953(d)(3) companies, including the treatment of separate units owned by such companies.

(2) Transactions Intended To Avoid the Limitations of Sections 953(d)(3) and 1503(d)

The IRS and Treasury Department understand that taxpayers may be implementing structures that result in the same overall tax consequences as structures that Congress intended to be subject to the loss limitation rules provided under sections 953(d)(3) and 1503(d). However, taxpayers may be taking the position that the structures are not subject to these loss limitation rules. For example, a foreign insurance company may, in lieu of making an election under section 953(d) and thus being subject to the limitations of sections 953(d)(3) and 1503(d), file a certificate of domestication in a state as a limited liability company. As a business entity with multiple charters, this entity would be treated as a domestic corporation for U.S. tax purposes under § 301.7701–2(b)(9). Taxpayers may take the position that this entity would be entitled to the same benefits of a company that makes an election under section 953(d), without being subject to the limitations on the use of its losses that are imposed under sections 953(d)(3) and 1503(d).

The IRS and Treasury Department disagree with the taxpayer's characterization of these structures under current law. In addition, the IRS and Treasury Department believe the taxpayers' characterization of the structures is contrary to the policies underlying section 953(d). Accordingly, the IRS and Treasury Department are considering issuing regulations, which may be retroactive, that would clarify the application of section 953(d)(3) to these structures. These regulations would provide that if a foreign insurance company is eligible to make an election to be treated as a domestic corporation pursuant to section 953(d), but in lieu of making such election becomes a domestic corporation through other means (for example, by filing a certificate of domestication in a state as a limited liability company), then such company shall be subject to the limitations under sections 953(d)(3) and 1503(d) (without regard to paragraph (2)(B) thereof). The IRS and Treasury Department request comments regarding appropriate rules to address these structures and other structures that are intended to avoid the purposes of section 953(d)(3).

O. All or Nothing Rule

Under the current regulations a triggering event (other than a foreign use) generally can be rebutted only if no portion of the dual consolidated loss can be used by (or carries over to) another person under foreign law. See § 1.1503–2(g)(2)(iii)(A)(*2*) through (*7*). Thus, even a de minimis foreign use will cause the entire amount of the dual consolidated loss to be recaptured and reported as income.

The proposed regulations retain this so-called all or nothing principle because the IRS and Treasury Department recognize that departing from it would lead to significant administrative burdens for the Commissioner and taxpayers. Although the all or nothing principle was retained, the IRS and Treasury Department requested comments regarding administrable alternatives that would not involve substantial analysis of foreign law.

Several comments were received with respect to this issue. A number of commentators stated that the final regulations should remove the all or nothing principle and allow for a pro-rata recapture such that, for example, the disposition of an individual separate unit, which is part of a combined

separate unit, would not result in the entire recapture of the combined separate unit's dual consolidated loss, but only the portion of the loss attributable to the individual separate unit. Another commentator suggested removing the all or nothing rule and allowing a taxpayer to establish that the losses otherwise subject to recapture were not, in fact, used under foreign law. The commentator suggested that any concerns regarding an analysis of foreign law could be mitigated by requiring the taxpayer to provide certified copies of foreign tax returns and, in addition, where the foreign tax base differs substantially from the U.S. tax base, by adopting an apportionment methodology.

The IRS and Treasury Department continue to believe that, even under the approaches suggested by these commentators, departing from the all or nothing principle would lead to substantial administrative complexity. As a result, these comments are not adopted.

Another commentator suggested that the final regulations include a general de minimis rule for purposes of applying the triggering and recapture provisions. Under this approach, if a taxpayer could establish that less than a specific percentage of the dual consolidated loss is available for a foreign use, the taxpayer could avoid recapture altogether. However, in situations where the potential loss available for a foreign use exceeds the de minimis amount, the dual consolidated loss would be recaptured to the extent it was actually put to a foreign use.

The IRS and Treasury Department do not believe that a de minimis rule as described would be meaningful given that the Commissioner and taxpayers would be required to determine the actual amount of the dual consolidated loss available for foreign use, which poses the same administrative concerns as generally departing from the all or nothing principle (that is, a complex analysis of foreign law or complicated ordering, stacking, or tracing rules). As a result, this suggestion is not adopted.

Finally, commentators suggested that following certain events otherwise requiring recapture, a taxpayer should be allowed to reduce the amount of recapture by establishing that a portion of the dual consolidated loss is attributable to items of deduction or loss that, due to permanent differences between the U.S. and foreign tax law, do not give rise to a corresponding item of deduction or loss in the foreign country. The commentators cited items of deduction or loss composing the dual consolidated loss attributable to a basis step-up following a section 338 election, or attributable to a deduction arising from the amortization of goodwill or certain intangibles under section 197, as examples of such items.

The IRS and Treasury Department recognize that items of deduction or loss that are never taken into account in the foreign country cannot be put to a foreign use. However, the IRS and Treasury Department believe that the suggested approach would, in most situations, involve many items of deduction and loss and, as a result, would present the same concerns as are present in the other approaches discussed above. For example, if the deductions giving rise to a dual consolidated loss were the result of a step-up in basis following a section 338 election, but the various assets to which such basis attached had, prior to the election, a basis for foreign tax purposes, complex ordering and stacking rules would be required to determine that, in fact, no portion of the dual consolidated loss is attributable to the pre-existing foreign tax basis. In addition, this approach would require rules to distinguish a permanent (or base) difference from a timing difference, in order to ensure that the portion of the dual consolidated loss that is not being recaptured would not be available for a foreign use at some point in the future. As a result, such rules would add complexity and would be administratively burdensome. Accordingly, this comment is not adopted.

Although these comments are not adopted in the final regulations, the IRS and Treasury Department believe that the application of the all or nothing rule will be significantly reduced under these regulations as a result of the new exceptions to foreign use and the further reduction of the term of the certification period.

P. Triggering Events and Related Rules

(1) Modification of Exceptions to Triggering Events

The proposed regulations contain exceptions to triggering events that generally apply where assets or interests sold or disposed of are acquired, directly or through certain wholly-owned pass-through entities, by members of the consolidated group that includes the dual resident corporation or separate unit, or by the unaffiliated domestic owner.

The final regulations generally retain these exceptions, but modify them to take into account the new exceptions to foreign use. For example, the exceptions are modified to include certain acquisitions by pass-through entities that are more than 90-percent owned (rather than wholly owned) by the consolidated group or unaffiliated domestic owner. These rules also address certain deemed transactions (for example, pursuant to Rev. Rul. 99–5 (1999–1 CB 434)) to minimize the likelihood that they result in triggering events, where appropriate, see § 601.601(d)(2)(ii)(*b*).

Finally, in response to comments discussed in section G(3) of this preamble, these regulations contain a new exception to triggering events that occur as a result of certain compulsory transfers.

(2) Rebuttal

Under the current regulations, taxpayers may rebut all but two of the triggering events such that there is no recapture of a certified dual consolidated loss (or related interest charge) as a result of a putative triggering event. In general, under the current regulations, a triggering event is rebutted if the taxpayer demonstrates to the satisfaction of the Commissioner that, depending on the triggering event, either: (1) The losses, expenses, or deductions of the dual resident corporation (or separate unit) cannot be used to offset income of another person under the laws of a foreign country; or (2) the transfer of assets did not result in a carryover under foreign law of the losses, expenses, or deductions of the dual resident corporation (or separate unit). See § 1.1503–2(g)(2)(iii)(A)(*2*) through 1.1503–2(g)(2)(iii)(A)(*7*). The dual consolidated loss rules do not require recapture or an interest charge in such cases because there is no opportunity for any portion of the dual consolidated loss to be used to offset income of any other person under the income tax laws of a foreign country.

The proposed regulations generally retain the rebuttal standard contained in the current regulations, with modifications. Taxpayers may rebut a triggering event under the proposed regulations if it can be demonstrated, to the satisfaction of the Commissioner, that there can be no foreign use of the dual consolidated loss. However, unlike the current regulations that have different standards for different triggering events, the proposed regulations apply the same standard to all triggering events (other than a foreign use triggering event, which cannot be rebutted).

One commentator noted that the rebuttal standard of the proposed regulations is unnecessarily broad with respect to certain asset transfers. For

example, according to this commentator, a triggering event cannot be rebutted under this standard where a separate unit transfers over 50 percent of its assets in a transaction that does not result in a loss carryover to the transferee under foreign law. This is the case because the separate unit would not be able to establish that the dual consolidated loss, which did not carry over to the transferee, could never be put to a foreign use. Accordingly, this commentator requested that the rebuttal standard for asset transfers contained in the current regulations be adopted in the final regulations.

The IRS and Treasury Department agree with this comment and these final regulations are modified accordingly.

Another commentator noted that neither the proposed nor current regulations specify how taxpayers must demonstrate that there can be no foreign use during the remaining certification period by any means. The commentator stated that this lack of specificity creates uncertainty and, as a result, requested additional guidance as to how the determination is to be made.

The IRS and Treasury Department believe that this demonstration can be made in a number of ways, including based on the taxpayer's interpretation of foreign law, on an opinion from local advisors, or on assurance from the local country tax authorities. In all cases, however, the determination must be made to the satisfaction of the Commissioner. These final regulations are modified accordingly.

(3) Reduction of Recapture Amount

The proposed regulations permit the elector to reduce the amount of the dual consolidated loss that must be recaptured upon a triggering event. The recapture amount can be reduced to the extent the elector demonstrates that the dual consolidated loss would have offset other income of the dual resident corporation or separate unit reported on a timely filed U.S. income tax return for any taxable year up to and including the taxable year of the triggering event if such loss had been subject to the limitation under § 1.1503(d)–2(b) of the proposed regulations.

Commentators questioned the requirements for the reduction of the recapture amount. One commentator suggested that recapture should be reduced by the amount of subsequent income attributable to the dual resident corporation or separate unit, irrespective of the income or loss of other group members.

The IRS and Treasury Department recognize that the policies underlying the SRLY rules differ from those underlying section 1503(d). Although the SRLY rules do not provide for a reduction in recapture in all cases consistent with the views of this commentator, the IRS and Treasury Department continue to believe that the SRLY rules are a reasonable and appropriate mechanism for implementing the restrictions of section 1503(d)(1) in the vast majority of cases. Further, the IRS and Treasury Department believe that deviating from the SRLY mechanism would add considerable complexity to the rules and could lead to unintended consequences. As a result, this comment is not adopted. The IRS and Treasury Department will consider addressing the interaction of the SRLY rules with the recapture provisions in future guidance. Comments are requested as to alternative mechanisms that are more consistent with dual consolidated loss policy and that are not unduly complicated.

(4) Interest Due on Recapture

Under both the current regulations and these final regulations, taxpayers must pay an interest charge in connection with recapture that is computed under the rules of section 6601. In response to comments, these final regulations clarify that this interest charge is deductible to the same extent as interest under section 6601.

(5) Treatment of Recapture Income Under Section 384

One commentator requested clarification regarding a subsequent elector's agreement to treat potential recapture amounts as unrealized built-in gain for purposes of section 384(a). The commentator stated that it may be unclear as to whether section 384 must otherwise apply to the transaction, whether the thresholds of section 384 apply, and whether potential recapture income treated as unrealized built-in gain is subject to reduction for income earned by a separate unit or dual resident corporation.

The IRS and Treasury Department believe that potential recapture amounts should be treated as unrealized built-in gains for purposes of determining whether section 384 applies, but that the requirements and exceptions of section 384 otherwise apply. In addition, the potential recapture amount treated as unrealized built-in gain may be reduced by potential offset, as permitted under the regulations. These final regulations have been modified accordingly.

(6) Reconstituted Dual Consolidated Loss

Both the current and proposed regulations contain a reconstituted loss provision. This rule generally provides that if a dual consolidated loss is recaptured as a result of a triggering event, the dual resident corporation or separate unit that incurred the loss is treated as having a net operating loss in an amount equal to the amount recaptured. The loss is reconstituted in the taxable year immediately following the year of the recapture and is subject to the general restrictions of section 1503(d). This rule is intended to put the taxpayer in the same approximate position it would have been in had it never made an election to use the dual consolidated loss.

These final regulations modify the proposed regulations' reconstituted loss rule to reflect the expansion of the separate unit combination rule and the rules that eliminate dual consolidated losses following certain transactions. In addition, the rule was modified to better take into account the interaction of the dual consolidated loss rules with the general loss carryover rules. For example, these final regulations provide that, other than with respect to the multiple-party event exception, a transfer of an interest in a separate unit by its domestic owner to another corporation cannot cause all or a portion of the dual consolidated loss of such separate unit to carry over to the acquiring corporation, absent the application of section 381.

Q. Certification Period

Section 1.1503–2(g)(2)(vi)(B) of the current regulations provides that if a (g)(2)(i) election is made with respect to a dual consolidated loss of a dual resident corporation or a hybrid entity separate unit, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, must file with its tax return an annual certification during the 15 year certification period. This filing permits the dual consolidated loss to be used in the United States to offset the income of a domestic affiliate but certifies that the losses or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. The current regulations do not require annual certifications for (g)(2)(i) agreements entered into with respect to dual consolidated losses of foreign branch separate units. The current regulations also provide that if there is a triggering event during the 15 year period

following the year in which the dual consolidated loss was incurred (certification period), the taxpayer must recapture and report as income the amount of the dual consolidated loss, and pay an interest charge. § 1.1503–2(g)(2)(iii)(A).

The proposed regulations reduce the certification period from 15 years to seven years, and expand the annual certification requirement to include dual consolidated losses of foreign branch separate units.

Commentators recommended that the certification period in the proposed regulations be further reduced to five years, because such five-year period would be sufficient to deter the types of double dips with which section 1503(d) is concerned, and would be consistent with time periods used under similar provisions (for example, the term of gain recognition agreements entered into under section 367(a)). The IRS and Treasury Department agree with this comment, and, as a result, the certification period in these final regulations is five years.

Another commentator asserted that extending the annual certification requirement to foreign branch separate units is both unnecessary and administratively burdensome and, as a result, such certification should not be included in these final regulations.

The IRS and Treasury Department continue to believe that the annual certification requirement improves taxpayer compliance and is beneficial in monitoring and deterring inappropriate double dips. In addition, the IRS and Treasury Department believe that, where appropriate, treating foreign branch separate units, hybrid entity separate units, and dual resident corporations consistently for purposes of section 1503(d) will reduce the administrative complexity of these regulations. As a result, this comment is not adopted.

R. Other Comments and Modifications

(1) Information Provided With Domestic Use Election

One commentator recommended that certain information provided with the domestic use election should not bind a taxpayer if the information is provided in good faith, but subsequently is determined to be erroneous. The IRS and Treasury Department believe that adopting this recommendation would be administratively burdensome. Accordingly, this comment is not adopted.

(2) No possibility of Foreign Use

One commentator noted that taxpayers may be eligible to demonstrate no possibility of foreign use, but still choose to enter into a domestic use agreement. The commentator explained that taxpayers may do so to avoid the cost and effort required to satisfy the no possibility of foreign use standard, recognizing that this demonstration would only be beneficial if there is a triggering event during the certification period. The commentator further stated that the taxpayer should nonetheless retain the ability to argue at a later time, when a foreign use may occur after a change in foreign law, that no dual consolidated loss existed in the year in which the loss was actually incurred. Thus, if there was a change in foreign law, taxpayers would not be penalized for being unable to rebut the triggering event in the current year (due to a change in foreign law) but could instead rely on the foreign law in effect for the year in which the loss was incurred.

The IRS and Treasury Department recognize that taxpayers may simply choose to file a domestic use election, rather than engage in additional efforts to demonstrate no possibility of foreign use. The IRS and Treasury Department believe that these final regulations provide ample opportunities for taxpayers willing to demonstrate no possibility of foreign use. Taxpayers have three opportunities to demonstrate no possibility of foreign use under the final regulations: first under § 1.1503(d)–6(c) to be excepted from the domestic use limitation, second under § 1.1503(d)–6(e)(2) to rebut a triggering event, and third under § 1.1503(d)–6(j)(2) to terminate a domestic use agreement. Because of these opportunities and the administrative burdens that would ensue from taking into account changes in foreign law, this comment is not adopted.

S. Effective Dates

(1) General Rule

Except as provided in this preamble, these final regulations apply to dual consolidated losses incurred in taxable years beginning on or after April 18, 2007. However, a taxpayer may apply these regulations, in their entirety, to dual consolidated losses incurred in taxable years beginning on or after January 1, 2007.

(2) Certification Period

A number of commentators requested that the reduced certification period of these final regulations apply with respect to dual consolidated losses that are subject to the current regulations. The commentators asserted that the policies underlying the reduced certification period should apply equally to dual consolidated losses that are subject to the current regulations. Commentators also recommended that the reduced certification period contained in these final regulations apply to closing agreements entered into between taxpayers and the IRS pursuant to § 1.1503–2(g)(2)(iv)(B)(*3*)(*i*) and Rev. Proc. 2000–42 (2000–2 CB 394), see § 601.601(d)(2)(ii)(*b*).

The IRS and Treasury Department generally agree with these comments and these final regulations are modified accordingly.

(3) Reasonable Cause Exception

These final regulations adopt the reasonable cause procedure for purposes of curing all late filings as introduced in the proposed regulations, and subsequently modified by Notice 2006–13 (2006–8 IRB 496) see § 601.601(d)(2)(ii)(*b*). Moreover, these final regulations provide that the reasonable cause procedures supplant the current procedures for all untimely filings with respect to dual consolidated losses incurred under the current regulations as well, except with respect to requests for closing agreements. Taxpayers requiring relief to cure a late request for a closing agreement must continue to seek extensions of time under §§ 301.9100–1 through 301.9100–3 and Rev. Proc. 2000–42 (2000–2 CB 394), see § 601.601(d)(2)(ii)(*b*). Taxpayers seeking relief for other late filings required in connection with such closing agreements must, however, use the reasonable cause procedure of these final regulations. Therefore, as a result of these changes, untimely filings under section 1503(d) and these regulations will no longer be eligible for the relief provided by §§ 301.9100–1 through 301.9100–3, regardless of whether such filings were required under the current regulations (except for certain closing agreements) or these final regulations.

(4) Multiple-Party Event Exception to Triggering Events

These final regulations provide an exception to certain triggering events involving multiple parties. In general, the exceptions provided under these final regulations with respect to multiple-party events are similar to those provided under § 1.1503–2(g)(2)(iv)(B)(*1*). The procedures required to satisfy these multiple-party event exceptions are also similar to those found in § 1.1503–2(g)(2)(iv)(B)(*3*). One important difference is that these final regulations do not require (or permit) taxpayers to obtain closing agreements. These final regulations also provide a special effective date

provision with respect to events described in § 1.1503–2(g)(2)(iv)(B)(*1*) that occur after April 18, 2007, that are with respect to dual consolidated losses subject to the current regulations. Such events are not eligible for the exception described in § 1.1503–2(g)(2)(iv)(B)(*1*) and thus are not eligible for a closing agreement as described in § 1.1503–2(g)(2)(iv)(B)(*3*)(*i*). Instead, such events are eligible for the multiple-party event exception described in these final regulations and as modified by the special effective date provision of § 1.1503(d)–8(b)(4). Taxpayers may, however, choose to apply the multiple-party exception to events described in § 1.1503–2(g)(2)(iv)(B)(*1*)(*i*) through (*iii*) that occur after March 19, 2007 and on or before April 18, 2007.

(5) Basis Adjustments

One commentator requested that the elimination of the special basis adjustments described in paragraph M of this preamble be applied retroactively. The commentator further requested that such retroactive application apply to adjustments that occurred in closed taxable years if the basis of the stock is relevant in an open taxable year.

The IRS and Treasury Department agree with this comment. As a result, these regulations provide that taxpayers may apply the basis adjustment rules of these final regulations for all taxable years if such adjustments affected tax basis that is relevant in an open taxable year.

(6) Other Provisions

A number of commentators requested that the IRS and Treasury Department provide that taxpayers be allowed to electively apply other provisions of these regulations to dual consolidated losses that are subject to the current regulations.

The IRS and Treasury Department do not believe that it would be appropriate to allow taxpayers to selectively apply provisions of these regulations (other than those that the IRS and Treasury Department view as clarifications) retroactively, because it would lead to administrative complexity for the IRS and could lead to unintended results.

Effect on Other Documents

These final regulations obsolete Notice 2006–13 (2006–8 IRB 496), see § 601.601(d)(2)(ii)(*b*). These final regulations also obsolete Rev. Proc. 2000–42 (2000–2 CB 394), see § 601.601(d)(2)(ii)(*b*), with respect to triggering events occurring after April 18, 2007.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that also have a foreign affiliate, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Jeffrey P. Cowan, of the Office of the Associate Chief Counsel (International), and Christopher L. Trump, formerly of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *
Section 1.1503(d) also issued under 26 U.S.C. 953(d) and 26 U.S.C. 1502.

§ 1.1502–21 [Amended]

■ **Par. 2.** In § 1.1502–21, paragraph (c)(2)(v) is amended by removing the language ''§ 1.1503–2'' and adding ''§§ 1.1503(d)–1 through 1.1503(d)–8'' in its place.

§ 1.1503–2A [Removed]

■ **Par. 3.** Section 1.1503–2A is removed.

■ **Par. 4.** New §§ 1.1503(d)–0 through 1.1503(d)–8 are added to read as follows:

§ 1.1503(d)–0 Table of contents.

This section lists the captions contained in §§ 1.1503(d)–1 through 1.1503(d)–8.

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§ 1.1503(d)–1 Definitions and special rules for filings under section 1503(d).

(a) *In general*. This section and §§ 1.1503(d)–2 through 1.1503(d)–8 provide rules concerning the determination and use of dual consolidated losses pursuant to section 1503(d). Paragraph (b) of this section provides definitions that apply for purposes of this section and §§ 1.1503(d)–2 through 1.1503(d)–8. Paragraph (c) of this section provides a reasonable cause exception and a signature requirement for filings.

(b) *Definitions*. The following definitions apply for purposes of this section and §§ 1.1503(d)–2 through 1.1503(d)–8:

(1) *Domestic corporation* means an entity classified as a domestic corporation under section 7701(a)(3) and (4) or otherwise treated as a domestic corporation by the Internal Revenue Code, including, but not limited to, sections 269B, 953(d), 1504(d), and 7874. However, solely for purposes of section 1503(d), the term domestic corporation shall not include a regulated investment company as defined in section 851, a real estate investment trust as defined in section 856, or an S corporation as defined in section 1361.

(2) *Dual resident corporation* means—

(i) A domestic corporation that is subject to an income tax of a foreign country on its worldwide income or on a residence basis. A corporation is taxed on a residence basis if it is taxed as a resident under the laws of the foreign country; and

(ii) A foreign insurance company that makes an election to be treated as a domestic corporation pursuant to section 953(d) and is treated as a member of an affiliated group for purposes of chapter 6, even if such company is not subject to an income tax of a foreign country on its worldwide income or on a residence basis. See section 953(d)(3).

(3) *Hybrid entity* means an entity that is not taxable as an association for Federal tax purposes, but is subject to an income tax of a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis.

(4) *Separate unit*—(i) *In general*. The term *separate unit* means either of the following that is carried on or owned, as applicable, directly or indirectly, by a domestic corporation (including a dual resident corporation):

(A) Except to the extent provided in paragraph (b)(4)(iii) of this section, a business operation outside the United States that, if carried on by a U.S. person, would constitute a foreign branch as defined in § 1.367(a)–6T(g)(1) (foreign branch separate unit).

(B) An interest in a hybrid entity (hybrid entity separate unit).

(ii) *Separate unit combination rule*. Except as otherwise provided in this paragraph, if a domestic owner, or two or more domestic owners that are members of the same consolidated group, have two or more separate units (individual separate units), then all such individual separate units that are located (in the case of a foreign branch separate unit) or subject to an income tax either on their worldwide income or on a residence basis (in the case of a hybrid entity an interest in which is a hybrid entity separate unit) in the same foreign country shall be treated as one separate unit (combined separate unit). See § 1.1503(d)–7(c) *Example 1*. Separate units of a foreign insurance company that is a dual resident corporation under paragraph (b)(2)(ii) of this section, however, shall not be combined with separate units of any other domestic corporation. Except as specifically provided in this section or §§ 1.1503(d)–2 through 1.1503(d)–8, any individual separate unit composing a combined separate unit loses its character as an individual separate unit.

(iii) *Business operations that do not constitute a permanent establishment*. A business operation carried on by a domestic corporation that is not a dual resident corporation shall not constitute a foreign branch separate unit, provided the business operation:

(A) Is not carried on indirectly through a hybrid entity or a transparent entity; and

(B) Is conducted in a country with which the United States has entered into an income tax convention and is not treated as a permanent establishment pursuant to that convention, or is not otherwise subject to tax on a net basis under that convention. See § 1.1503(d)–7(c) *Example 2*.

(iv) *Foreign branch separate units held by dual resident corporations or hybrid entities in the same foreign country*. A foreign branch separate unit may be owned by a dual resident corporation, or through a hybrid entity (an interest in which is a separate unit), even where the foreign branch is located in the same foreign country that subjects such dual resident corporation or hybrid entity to tax on its worldwide income or on a residence basis. But see the rule under paragraph (b)(4)(ii) of this section that combines certain same-country hybrid entity separate units and foreign branch separate units. See also § 1.1503(d)–7(c) *Example 1*.

(5) *Dual consolidated loss* means—

(i) In the case of a dual resident corporation, and except to the extent provided in § 1.1503(d)–5(b), the net operating loss (as defined in section 172(c) and the related regulations) incurred in a year in which the corporation is a dual resident corporation; and

(ii) In the case of a separate unit, the net loss attributable to the separate unit under § 1.1503(d)–5(c) through (e).

(6) *Subject to tax*. For purposes of determining whether a domestic corporation or another entity is subject to an income tax of a foreign country on its income, the fact that it has no actual income tax liability to the foreign country for a particular taxable year shall not be taken into account.

(7) *Foreign country* includes any possession of the United States.

(8) *Consolidated group* has the meaning provided in § 1.1502–1(h).

(9) *Domestic owner* means—

(i) A domestic corporation (including a dual resident corporation) that has one or more separate units or interests in a transparent entity; and

(ii) In the case of a combined separate unit, a domestic corporation (including a dual resident corporation) that has one or more individual separate units that are treated as part of the combined separate unit under paragraph (b)(4)(ii) of this section.

(10) *Affiliated dual resident corporation* and *affiliated domestic owner* mean a dual resident corporation and a domestic owner, respectively, that is a member of a consolidated group.

(11) *Unaffiliated dual resident corporation*, *unaffiliated domestic corporation*, and *unaffiliated domestic owner* mean a dual resident corporation, domestic corporation, and domestic owner, respectively, that is not a member of a consolidated group.

(12) *Domestic affiliate* means—

(i) A member of an affiliated group, without regard to the exceptions contained in section 1504(b) (other than section 1504(b)(3)) relating to includible corporations;

(ii) A domestic owner;

(iii) A separate unit; or

(iv) An interest in a transparent entity, as defined in paragraph (b)(16) of this section.

(13) *Domestic use*. See § 1.1503(d)–2.

(14) *Foreign use*. See § 1.1503(d)–3.

(15) *Grantor trust* means a trust, any portion of which is treated as being owned by the grantor or another person under subpart E of subchapter J of this chapter.

(16) *Transparent entity*—(i) *In general*. The term *transparent entity* means an entity described in this paragraph (b)(16) where all or a portion of its interests are owned, directly or indirectly, by a domestic corporation. An entity is described in this paragraph (b)(16) if the entity—

(A) Is not taxable as an association for Federal tax purposes;

(B) Is not subject to income tax in a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis; and

(C) Is not a pass-through entity under the laws of the applicable foreign country. For purposes of applying the preceding sentence, the applicable foreign country is the foreign country in which the relevant foreign branch separate unit is located, or the foreign country that subjects the relevant hybrid entity (an interest in which is a separate unit) or dual resident corporation to an income tax either on its worldwide income or on a residence basis.

(ii) *Example*. A U.S. limited liability company (LLC) does not elect to be taxed as an association for Federal tax purposes and is not subject to income tax in a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis. The LLC is owned by a hybrid entity (an interest in which is a separate unit) that is the relevant hybrid entity. Provided the LLC is not treated as a pass-through entity by the applicable foreign country that subjects the relevant hybrid entity to an income tax either on its worldwide income or on a residence basis, the LLC would qualify as a transparent entity. See also § 1.1503(d)–7(c) *Example 26*.

(17) *Disregarded entity* means an entity that is disregarded as an entity separate from its owner, under §§ 301.7701–1 through 301.7701–3 of this chapter, for Federal tax purposes.

(18) *Partnership* means an entity that is classified as a partnership, under §§ 301.7701–1 through 301.7701–3 of this chapter, for Federal tax purposes.

(19) *Indirectly*, when used in reference to ownership, means ownership through a partnership, a disregarded entity, or a grantor trust, regardless of whether the partnership, disregarded entity, or grantor trust is a U.S. person.

(20) *Certification period* means the period of time up to and including the fifth taxable year following the year in which the dual consolidated loss that is the subject of a domestic use agreement (as described in § 1.1503(d)–6(d)(1)) was incurred.

(c) *Special rules for filings under section 1503(d)*—(1) *Reasonable cause exception*. A person that is permitted or required to file an election, agreement, statement, rebuttal, computation, or other information pursuant to section 1503(d) and these regulations, that fails to make such filing in a timely manner, shall be considered to have satisfied the timeliness requirement with respect to such filing if the person is able to demonstrate, to the Area Director, Field Examination, Small Business/Self Employed or the Director of Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the taxpayer's tax return for the taxable year, that such failure was due to reasonable cause and not willful neglect. In determining whether the taxpayer has reasonable cause, the Director shall consider whether the taxpayer acted reasonably and in good faith. In general, the taxpayer must demonstrate that it exercised ordinary care and prudence in meeting its tax obligations but nonetheless did not comply with the prescribed duty within the prescribed time. Whether the taxpayer acted reasonably and in good faith will be determined after considering all the facts and circumstances. The Director shall notify the person in writing within 120 days of the filing if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination. For this purpose, the 120-day period shall begin on the date the taxpayer is notified in writing that the request has been received and assigned for review. If, once such period commences, the taxpayer is not again notified within 120 days, then the taxpayer shall be deemed to have established reasonable cause. The reasonable cause exception of this paragraph (c) shall only apply if, once the person becomes aware of its failure to file the election, agreement, statement, rebuttal, computation or other information in a timely manner, the person complies with the requirements of paragraph (c)(2) of this section.

(2) *Requirements for reasonable cause relief*—(i) *Time of submission*. Requests for reasonable cause relief will only be considered if once the person becomes aware of the failure to file the election, agreement, statement, rebuttal, computation or other information, the person attaches all the documents that should have been filed, as well as a written statement setting forth the reasons for the failure to timely comply, to an amended return that amends the return to which the documents should have been attached pursuant to the rules of section 1503(d) and these regulations.

(ii) *Notice requirement*. In addition to the requirements of paragraph (c)(2)(i) of this section, the taxpayer must provide a copy of the amended return and all required attachments to the Director as follows:

(A) If the taxpayer is under examination for any taxable year when the taxpayer requests relief, the taxpayer must provide a copy of the amended return and attachments to the personnel conducting the examination.

(B) If the taxpayer is not under examination for any taxable year when the taxpayer requests relief, the taxpayer must provide a copy of the amended return and attachments to the Director having jurisdiction of the taxpayer's return.

(3) *Signature requirement*. When an election, agreement, statement, rebuttal, computation, or other information is required pursuant to section 1503(d) and these regulations to be attached to

and filed by the due date (including extensions) of a U.S. tax return and signed under penalties of perjury by the person who signs the return, the attachment and filing of an unsigned copy is considered to satisfy such requirement, provided the taxpayer retains the original in its records in the manner specified by § 1.6001–1(e).

§ 1.1503(d)–2 Domestic use.

A *domestic use* of a dual consolidated loss shall be deemed to occur when the dual consolidated loss is made available to offset, directly or indirectly, the income of a domestic affiliate (other than the dual resident corporation or separate unit that, in each case, incurred the dual consolidated loss) in the taxable year in which the dual consolidated loss is recognized, or in any other taxable year, regardless of whether the dual consolidated loss offsets income under the income tax laws of a foreign country and regardless of whether any income that the dual consolidated loss may offset in the foreign country is, has been, or will be subject to tax in the United States. A domestic use shall be deemed to occur in the year the dual consolidated loss is included in the computation of the taxable income of a consolidated group, unaffiliated dual resident corporation, or an unaffiliated domestic owner, as applicable, even if no tax benefit results from such inclusion in that year. See § 1.1503(d)–7(c) *Examples 2* through *4*.

§ 1.1503(d)–3 Foreign use.

(a) *Foreign use*—(1) *In general.* Except as provided in paragraph (c) of this section, a *foreign use* of a dual consolidated loss shall be deemed to occur when any portion of a deduction or loss taken into account in computing the dual consolidated loss is made available under the income tax laws of a foreign country to offset or reduce, directly or indirectly, any item that is recognized as income or gain under such laws and that is, or would be, considered under U.S. tax principles to be an item of—

(i) A foreign corporation as defined in section 7701(a)(3) and (a)(5); or

(ii) A direct or indirect owner of an interest in a hybrid entity, provided such interest is not a separate unit. See § 1.1503(d)–7(c) *Examples 5* through *10* and *37*.

(2) *Indirect use*—(i) *General rule.* Except to the extent provided in paragraph (a)(2)(ii) of this section, an item of deduction or loss shall be deemed to be made available indirectly if—

(A) One or more items are taken into account as deductions or losses for foreign tax purposes, but do not give rise to corresponding items of income or gain for U.S. tax purposes; and

(B) The item or items described in paragraph (a)(2)(i)(A) of this section have the effect of making an item of deduction or loss composing the dual consolidated loss available for a foreign use as described in paragraph (a)(1) of this section.

(ii) *Exception.* The general rule provided in paragraph (a)(2)(i) of this section shall not apply if the consolidated group, unaffiliated domestic owner, or unaffiliated dual resident corporation demonstrates, to the satisfaction of the Commissioner, that the item or items described in paragraph (a)(2)(i)(A) of this section that gave rise to the indirect foreign use—

(A) Were not incurred, or taken into account, with a principal purpose of avoiding the provisions of section 1503(d). For purposes of this paragraph (a)(2)(ii), an item incurred or taken into account as interest for foreign tax purposes, but disregarded for U.S. tax purposes, shall be deemed to have been incurred, or taken into account, with a principal purpose of avoiding the provisions of section 1503(d). Similarly, for purposes of this paragraph (a)(2)(ii), an item incurred or taken into account as the result of an instrument that is treated as debt for foreign tax purposes and equity for U.S. tax purposes, shall be deemed to have been incurred, or taken into account, with a principal purpose of avoiding the provisions of section 1503(d); and

(B) Were incurred, or taken into account, in the ordinary course of the dual resident corporation's or separate unit's trade or business.

(iii) *Examples.* See § 1.1503(d)–7(c) *Examples 6* through *8*.

(3) *Deemed use.* See paragraph (e) of this section for a deemed foreign use pursuant to the mirror legislation rule.

(b) *Available for use.* A foreign use shall be deemed to occur in the year in which any portion of a deduction or loss taken into account in computing the dual consolidated loss is made available for an offset described in paragraph (a) of this section, regardless of whether it actually offsets or reduces any items of income or gain under the income tax laws of the foreign country in such year, and regardless of whether any of the items that may be so offset or reduced are regarded as income under U.S. tax principles.

(c) *Exceptions*—(1) *In general.* Paragraphs (c)(2) through (9) of this section provide exceptions to the general definition of foreign use set forth in paragraphs (a) and (b) of this section. These exceptions only apply to a foreign use that occurs solely as a result of the conditions or circumstances described therein, and do not apply if a foreign use occurs in any other case or by any other means. For example, the exception under paragraph (c)(4) of this section (regarding certain interests in partnerships or grantor trusts) shall not apply where the item of deduction or loss is made available through a foreign consolidation regime (or similar method). In addition, these exceptions do not apply when attempting to demonstrate that no foreign use of a dual consolidated loss can occur in any other year by any means under § 1.1503(d)–6(c), (e)(2)(i), or (j)(2). But see § 1.1503(d)–6(e)(2)(ii), which takes into account the exception under paragraph (c)(7) of this section for purposes of rebutting certain asset transfers.

(2) *Election or merger required to enable foreign use.* Where the laws of a foreign country provide an election that would enable a foreign use, a foreign use shall be considered to occur only if the election is made. Similarly, where the laws of a foreign country would enable a foreign use through a sale, merger, or similar transaction, a foreign use shall be considered to occur only if the sale, merger, or similar transaction occurs.

(3) *Presumed use where no foreign country rule for determining use.* This paragraph (c)(3) applies if the losses or deductions composing the dual consolidated loss are made available under the laws of a foreign country both to offset income that would constitute a foreign use and to offset income that would not constitute a foreign use, and the laws of the foreign country do not provide applicable rules for determining which income is offset by the losses or deductions. In such a case, the losses or deductions shall be deemed to be made available to offset the income that does not constitute a foreign use, to the extent of such income, before being considered to be made available to offset the income that does constitute a foreign use. See § 1.1503(d)–7(c) *Example 11*.

(4) *Certain interests in partnerships or grantor trusts*—(i) *General rule.* Except to the extent provided in paragraph (c)(4)(iii) of this section, this paragraph (c)(4)(i) applies to a dual consolidated loss attributable to an interest in a hybrid entity partnership or a hybrid entity grantor trust, or to a separate unit owned indirectly through a partnership or grantor trust. In such a case, a foreign use will not be considered to occur if the foreign use is solely the result of another person's ownership of an interest in the partnership or grantor trust, as applicable, and the allocation

or carry forward of an item of deduction or loss composing such dual consolidated loss as a result of such ownership. See § 1.1503(d)–7(c) *Example 13*.

(ii) *Combined separate unit.* This paragraph applies to a dual consolidated loss attributable to a combined separate unit that includes an individual separate unit to which paragraph (c)(4)(i) of this section would apply, but for the application of the separate unit combination rule provided under § 1.1503(d)–1(b)(4)(ii). In such a case, paragraph (c)(4)(i) of this section shall apply to the portion of the dual consolidated loss of such combined separate unit that is attributable, as provided under § 1.1503(d)–5(c) through (e), to the individual separate unit (otherwise described in paragraph (c)(4)(i) of this section) that is a component of the combined separate unit. See § 1.1503(d)–7(c) *Example 14*.

(iii) *Reduction in interest.* The exception under paragraph (c)(4)(i) of this section shall not apply if, at any time following the year in which the dual consolidated loss is incurred, there is more than a *de minimis* reduction in the domestic owner's percentage interest in the partnership or grantor trust, as applicable, as described in paragraph (c)(5) of this section. In such a case, a foreign use shall be deemed to occur at the time the reduction in interest exceeds the *de minimis* amount. See § 1.1503(d)–7(c) *Example 13*.

(5) *De minimis reduction of an interest in a separate unit*—(i) *General rule.* This paragraph applies to a *de minimis* reduction of a domestic owner's interest in a separate unit (including an interest described in paragraph (c)(4)(i) of this section). Except to the extent provided in paragraph (c)(5)(ii) of this section, no foreign use shall be considered to occur with respect to a dual consolidated loss as a result of an item of deduction or loss composing such dual consolidated loss being made available solely as a result of a reduction in the domestic owner's interest in the separate unit, as provided under paragraph (c)(5)(iii) of this section. See § 1.1503(d)–7(c) *Example 5*.

(ii) *Limitations.* The exception provided in paragraph (c)(5)(i) of this section shall not apply if—

(A) During any 12-month period the domestic owner's percentage interest in the separate unit is reduced by 10 percent or more, as determined by reference to the domestic owner's interest at the beginning of the 12-month period; or

(B) At any time the domestic owner's percentage interest in the separate unit is reduced by 30 percent or more, as determined by reference to the domestic owner's interest at the end of the taxable year in which the dual consolidated loss was incurred.

(iii) *Reduction in interest.* The following rules apply for purposes of paragraphs (c)(4) and (5) of this section. A reduction of a domestic owner's interest in a separate unit shall include a reduction resulting from another person acquiring through sale, exchange, contribution, or other means, an interest in the foreign branch or hybrid entity, as applicable. A reduction may occur either directly or indirectly, including through an interest in a partnership, a disregarded entity, or a grantor trust through which a separate unit is carried on or owned. In the case of an interest in a hybrid entity partnership or a separate unit all or a portion of which is carried on or owned through a partnership, an interest in such separate unit (or portion of such separate unit) is determined by reference to the owner's interest in the profits or the capital in the separate unit. In the case of an interest in a hybrid entity grantor trust or a separate unit all or a portion of which is carried on or owned through a grantor trust, an interest in such separate unit (or portion of such separate unit) is determined by reference to the domestic owner's share of the assets and liabilities of the separate unit.

(iv) *Examples and coordination with exceptions to other triggering events.* See § 1.1503(d)–7(c) *Examples 5*, *13*, and *14*. See also § 1.1503(d)–6(f)(3) and (f)(5) for rules that coordinate the de minimis exception to foreign use with exceptions to other triggering events described in § 1.1503(d)–6(e)(1), and provide an exception to foreign use following certain compulsory transfers.

(6) *Certain asset basis carryovers.* No foreign use shall be considered to occur with respect to a dual consolidated loss solely as a result of items of deduction or loss composing such dual consolidated loss being made available as a result of the transfer of assets of a dual resident corporation or separate unit, provided—

(i) Such items of loss and deduction are made available solely as a result of the basis of the transferred assets being determined, under foreign law, in whole or in part by reference to the basis of the assets in the hands of the dual resident corporation or separate unit;

(ii) The aggregate adjusted basis, as determined under U.S. tax principles, of all the assets so transferred during any 12-month period is less than 10 percent of the aggregate adjusted basis, as determined under U.S. tax principles, of all the dual resident corporation's or separate unit's assets, determined by reference to the assets held at the beginning of such 12-month period; and

(iii) The aggregate adjusted basis, as determined under U.S. tax principles, of all the assets so transferred at any time is less than 30 percent of the aggregate adjusted basis, as determined under U.S. tax principles, of all the dual resident corporation's or separate unit's assets, determined by reference to the assets held at the end of the taxable year in which the dual consolidated loss was generated. See § 1.1503(d)–7(c) *Example 15*.

(7) *Assumption of certain liabilities*—(i) *In general.* Except to the extent provided in paragraph (c)(7)(ii) of this section, no foreign use shall be considered to occur with respect to any dual consolidated loss solely as a result of an item of deduction or loss composing such dual consolidated loss being made available following the assumption of liabilities of a dual resident corporation or separate unit, provided such availability arises solely as the result of an item of deduction or loss incurred with respect to, or as a result of, such liabilities. See § 1.1503(d)–7(c) *Example 16*.

(ii) *Ordinary course limitation.* Paragraph (c)(7)(i) of this section shall apply only to the extent the liabilities assumed were incurred in the ordinary course of the dual resident corporation's, or separate unit's, trade or business. For purposes of this paragraph, liabilities incurred in the ordinary course of a trade or business shall include debt incurred to finance the trade or business of the dual resident corporation or separate unit.

(8) *Multiple-party events.* This paragraph applies to a transaction that qualifies for the triggering event exception described in § 1.1503(d)–6(f)(2)(i)(B) where the acquiring unaffiliated domestic corporation or consolidated group owns, directly or indirectly, more than 90 percent, but less than 100 percent, of the transferred assets or interests immediately after the transaction. In such a case, no foreign use shall be considered to occur with respect to a dual consolidated loss of the dual resident corporation or separate unit whose assets or interests were acquired, solely as a result of the less than 10 percent direct or indirect ownership of the acquired assets or interests by persons other than the acquiring unaffiliated domestic corporation or consolidated group, as applicable, immediately after the transaction. See § 1.1503(d)–7(c) *Example 37*.

(9) *Additional guidance.* The Commissioner may provide, by guidance published in the Internal Revenue Bulletin, that certain events or transactions do or do not result in a foreign use. Such guidance may also modify the triggering events and rebuttals described in § 1.1503(d)–6(e), and the exceptions thereto under § 1.1503(d)–6(f), as appropriate.

(d) *Ordering rules for determining the foreign use of losses.* If the laws of a foreign country provide for the foreign use of losses of a dual resident corporation or a separate unit, but do not provide applicable rules for determining the order in which such losses are used in a taxable year, the following rules shall apply:

(1) Any net loss, or net income, that the dual resident corporation or separate unit has in a taxable year shall first be used to offset net income, or loss, recognized by its affiliates in the same taxable year before any carry over of its losses is considered to be used to offset any income from the taxable year.

(2) If under the laws of the foreign country the dual resident corporation or separate unit has losses from different taxable years, it shall be deemed to use first the losses which would not constitute a triggering event that would result in the recapture of a dual consolidated loss pursuant to § 1.1503(d)–6(h). Thereafter, it shall be deemed to use first the losses from the most recent taxable year from which a loss may be carried forward or back for foreign law purposes.

(3) Where different losses or deductions (for example, capital losses and ordinary losses) of a dual resident corporation or separate unit incurred in the same taxable year are available for foreign use, the different losses shall be deemed to be used on a pro rata basis. See § 1.1503(d)–7(c) *Example 12*.

(e) *Mirror legislation rule*—(1) *In general.* Except as provided in paragraph (e)(2) of this section and § 1.1503(d)–6(b) (relating to agreements entered into between the United States and a foreign country), a foreign use shall be deemed to occur if the income tax laws of a foreign country would deny any opportunity for the foreign use of the dual consolidated loss in the year in which the dual consolidated loss is incurred (mirror legislation), determined by assuming that such foreign country had recognized the dual consolidated loss in such year, for any of the following reasons:

(i) The dual resident corporation or separate unit that incurred the loss is subject to income taxation by another country (for example, the United States) on its worldwide income or on a residence basis.

(ii) The loss may be available to offset income (other than income of the dual resident corporation or separate unit) under the laws of another country (for example, the United States).

(iii) The deductibility of any portion of a deduction or loss taken into account in computing the dual consolidated loss depends on whether such amount is deductible under the laws of another country (for example, the United States). See § 1.1503(d)–7(c) *Examples 17* through *19.*

(2) *Stand-alone exception*—(i) *In general.* This paragraph (e)(2) applies if, in the absence of the mirror legislation described in paragraph (e)(1) of this section, no item of deduction or loss composing the dual consolidated loss of such dual resident corporation or separate unit would otherwise be available for a foreign use in the taxable year in which such dual consolidated loss is incurred. This determination is made without regard to whether such availability is limited by election (or other similar procedure). However, for purposes of this paragraph (e)(2)(i), no item of deduction or loss composing the dual consolidated loss of a dual resident corporation or separate unit is considered to be made available for foreign use solely because the laws of a foreign country would enable a foreign use through a sale, merger, or similar transaction (provided no such sale, merger, or similar transaction actually occurs). In such a case, no foreign use shall be considered to occur pursuant to paragraph (e)(1) of this section with respect to the dual consolidated loss, provided the requirements of paragraph (e)(2)(ii) of this section are satisfied. See § 1.1503(d)–7(c) *Examples 17* through *19.*

(ii) *Stand-alone domestic use agreement.* In order to qualify for the exception under paragraph (e)(2)(i) of this section, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, must enter into a domestic use agreement in accordance with the provisions of § 1.1503(d)–6(d) and, in addition, must include the following items in such domestic use agreement:

(A) A statement that the document is also being submitted under the provisions of paragraph (e)(2) of this section.

(B) A certification that the conditions of paragraph (e)(2)(i) of this section are satisfied during the taxable year in which the dual consolidated loss is incurred.

(C) An agreement to include with each annual certification required under § 1.1503(d)–6(g), a certification that the conditions described in paragraph (e)(2)(i) of this section are satisfied during the taxable year of each such certification.

(iii) *Termination of stand-alone domestic use agreement.* This paragraph (e)(2)(iii) applies to a consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, that entered into a domestic use agreement pursuant to paragraph (e)(2)(ii) of this section, with respect to a dual consolidated loss, and which subsequently makes an election pursuant to § 1.1503(d)–6(b) (relating to agreements entered into between the United States and a foreign country) with respect to such dual consolidated loss. In such a case, the dual consolidated loss shall be subject to the election under § 1.1503(d)–6(b) (and any related agreements, representations and conditions), and the domestic use agreement entered into pursuant to paragraph (e)(2)(ii) of this section shall terminate and have no further effect.

§ 1.1503(d)–4 Domestic use limitation and related operating rules.

(a) *Scope.* This section prescribes rules that apply when the general limitation on the domestic use of a dual consolidated loss under paragraph (b) of this section applies. Thus, the rules of this section do not apply when an exception to the domestic use limitation applies (for example, as a result of a domestic use election under § 1.1503(d)–6(d)). In general, when the domestic use limitation applies, the dual consolidated loss of a dual resident corporation or separate unit is subject to the separate return limitation year (SRLY) provisions of § 1.1502–21(c), as modified under this section. Paragraph (c) of this section provides rules that determine the effect of a dual consolidated loss on a consolidated group, an unaffiliated dual resident corporation, or an unaffiliated domestic owner. Paragraph (d) of this section provides rules that eliminate dual consolidated losses following certain transactions or events. Paragraph (e) of this section contains provisions that prevent dual consolidated losses from offsetting tainted income. Finally, paragraph (f) of this section provides rules for computing foreign tax credits.

(b) *Limitation on domestic use of a dual consolidated loss.* Except as provided in § 1.1503(d)–6, the domestic use of a dual consolidated loss is not permitted. See § 1.1503(d)–2 for the definition of a domestic use. See also § 1.1503(d)–7(c) *Examples 2* through *4.*

(c) *Effect of a dual consolidated loss on a consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner.* For any taxable year in which a dual resident corporation or separate unit has a dual consolidated loss that is subject to the domestic use limitation of paragraph (b) of this section, the following rules shall apply:

(1) *Dual resident corporation.* This paragraph (c)(1) applies to a dual consolidated loss of a dual resident corporation. The unaffiliated dual resident corporation, or consolidated group that includes the dual resident corporation, shall compute its taxable income (or loss), or consolidated taxable income (or loss), respectively, without taking into account those items of deduction and loss that compose the dual resident corporation's dual consolidated loss. For this purpose, the dual consolidated loss shall be treated as composed of a pro rata portion of each item of deduction and loss of the dual resident corporation taken into account in calculating the dual consolidated loss. The dual consolidated loss is subject to the limitations on its use contained in paragraph (c)(3) of this section and, subject to such limitations, may be carried over or back for use in other taxable years as a separate net operating loss carryover or carryback of the dual resident corporation arising in the year incurred. If the dual resident corporation owns a separate unit or an interest in a transparent entity, the limitations contained in paragraph (c)(3) of this section shall apply to the dual resident corporation as if the separate unit or interest in a transparent entity were a separate domestic corporation that filed a consolidated return with the unaffiliated dual resident corporation, or with the consolidated group of the affiliated dual resident corporation, as applicable.

(2) *Separate unit.* This paragraph (c)(2) applies to a dual consolidated loss that is attributable to a separate unit. The unaffiliated domestic owner of a separate unit, or the consolidated group of an affiliated domestic owner of a separate unit, shall compute its taxable income (or loss) or consolidated taxable income (or loss), respectively, without taking into account those items of deduction and loss that compose the separate unit's dual consolidated loss. For this purpose, the dual consolidated loss shall be treated as composed of a pro rata portion of each item of deduction and loss of the separate unit taken into account in calculating the dual consolidated loss. The dual consolidated loss is subject to the limitations contained in paragraph (c)(3) of this section as if the separate unit to which the dual consolidated loss is attributable were a separate domestic corporation that filed a consolidated return with its unaffiliated domestic owner or with the consolidated group of its affiliated domestic owner, as applicable. Subject to such limitations, the dual consolidated loss may be carried over or back for use in other taxable years as a separate net operating loss carryover or carryback of the separate unit arising in the year incurred. See § 1.1503(d)–7(c) *Examples 29* and *38.*

(3) *SRLY limitation.* The dual consolidated loss shall be treated as a loss incurred by the dual resident corporation or separate unit in a separate return limitation year and shall be subject to all of the limitations of § 1.1502–21(c) (SRLY limitation), subject to the following modifications—

(i) Notwithstanding § 1.1502–1(f)(2)(i), the SRLY limitation is applied to any dual consolidated loss of a common parent that is a dual resident corporation, or any dual consolidated loss attributable to a separate unit of a common parent;

(ii) The SRLY limitation is applied without regard to § 1.1502–21(c)(2) (SRLY subgroup limitation) and 1.1502–21(g) (overlap with section 382);

(iii) For purposes of calculating the general SRLY limitation under § 1.1502–21(c)(1)(i), the calculation of aggregate consolidated taxable income shall only include items of income, gain, deduction, and loss generated—

(A) In the case of a hybrid entity separate unit, in years in which the hybrid entity (an interest in which is a separate unit) is taxed as a corporation (or otherwise at the entity level) either on its worldwide income or as a resident in the same foreign country in which it was so taxed during the year in which the dual consolidated loss was generated; and

(B) In the case of a foreign branch separate unit, in years in which the foreign branch qualified as a separate unit in the same foreign country in which it so qualified during the year in which the dual consolidated loss was generated.

(iv) For purposes of calculating the general SRLY limitation under § 1.1502–21(c)(1)(i), the calculation of aggregate consolidated taxable income shall not include any amount included in income pursuant to § 1.1503(d)–6(h) (relating to the recapture of a dual consolidated loss).

(4) *Items of a dual consolidated loss used in other taxable years.* A pro rata portion of each item of deduction or loss that composes the dual consolidated loss shall be considered to be used when the dual consolidated loss is used in other taxable years. See § 1.1503(d)–7(c) *Examples 29* and *38.*

(5) *Reconstituted net operating losses.* For additional rules and limitations that apply to reconstituted net operating losses, see § 1.1503(d)–6(h)(6).

(d) *Elimination of a dual consolidated loss after certain transactions*—(1) *General rule.* In general, a dual resident corporation has a net operating loss (and, therefore, a dual consolidated loss) only if it sustains such loss, or succeeds to such loss as a result of acquiring the assets of a corporation that sustained the loss in a transaction described in section 381(a). Similarly, a net loss generally is attributable to a separate unit of a domestic owner (and therefore is a dual consolidated loss) only if the domestic owner incurs the deductions or losses, or succeeds to such deductions or losses in a transaction described in section 381(a). Except as provided in § 1.1503(d)–6(h)(6)(iii), section 1503(d) and these regulations do not alter these general rules. Thus, the provisions of §§ 1.1503(d)–1 through 1.1503(d)–8 generally do not cause a corporation to have a dual consolidated loss if it did not sustain (or inherit) the loss. Instead, these regulations either eliminate a dual consolidated loss that a corporation sustained (or inherited), or prevent the carryover of a dual consolidated loss under section 381 that would ordinarily occur, as a result of certain transactions.

(i) *Transactions described in section 381(a).* This paragraph (d)(1)(i) applies to a dual consolidated loss of a dual resident corporation, or of a domestic owner attributable to a separate unit, that is subject to the domestic use limitation rule of paragraph (b) of this section. In such a case, and except as provided in paragraph (d)(2) of this section, the dual consolidated loss shall not carry over to another corporation in a transaction described in section 381(a) and, as a result, shall be eliminated. See § 1.1503(d)–7(c) *Example 20.*

(ii) *Cessation of separate unit status.* This paragraph (d)(1)(ii) applies when a separate unit of an unaffiliated domestic owner ceases to be a separate unit of its domestic owner, or when a separate unit of an affiliated domestic owner ceases to be a separate unit with respect to its domestic owner and all other members of the affiliated domestic owner's consolidated group. In such a case, and except as provided in paragraph (d)(2)(iii) of this section, a dual consolidated loss of the domestic owner attributable to such separate unit, that is subject to the domestic use limitation of paragraph (b) of this section, shall be

eliminated. For purposes of this paragraph (d)(1)(ii), a separate unit may cease to be a separate unit if, for example, such separate unit is terminated, dissolved, liquidated, sold, or otherwise disposed of. See § 1.1503(d)–7(c) *Example 21.*

(2) *Exceptions*—(i) *Certain section 368(a)(1)(F) reorganizations.* Paragraph (d)(1)(i) of this section (relating to transactions described in section 381(a)) shall not apply to a dual consolidated loss of a dual resident corporation that undergoes a reorganization described in section 368(a)(1)(F) in which the resulting corporation is a domestic corporation. In such a case, the dual consolidated loss of the resulting corporation continues to be subject to the limitations of paragraphs (b) and (c) of this section, applied as if the resulting corporation incurred the dual consolidated loss.

(ii) *Acquisition of a dual resident corporation by another dual resident corporation.* If a dual resident corporation transfers its assets to another dual resident corporation in a transaction described in section 381(a), and the transferee corporation is a resident of (or is taxed on its worldwide income by) the same foreign country of which the transferor was a resident (or was taxed on its worldwide income), then paragraph (d)(1)(i) of this section shall not apply with respect to dual consolidated losses of the dual resident corporation, and income generated by the transferee may be offset by the carryover dual consolidated losses of the transferor, subject to the limitations of paragraphs (b) and (c) of this section applied as if the transferee incurred the dual consolidated loss. Dual consolidated losses of the transferor dual resident corporation may not, however, be used to offset income attributable to separate units or interests in transparent entities owned by the transferee because they constitute domestic affiliates under § 1.1503(d)–1(b)(12)(iii) and (iv), respectively.

(iii) *Acquisition of a separate unit by a domestic corporation.* This paragraph (d)(2)(iii) provides exceptions to the general rules in paragraphs (d)(1)(i) and (ii) of this section that eliminate the dual consolidated loss of a domestic owner that is attributable to a separate unit following certain transactions or events. The exceptions set forth in this paragraph (d)(2)(iii) shall only apply where a domestic owner transfers its assets to a domestic corporation (transferee corporation) in a transaction described in section 381(a).

(A) *Acquisition by a corporation that is not a member of the same consolidated group*—(1) *General rule.* If a domestic owner transfers either an individual separate unit or a combined separate unit to a transferee corporation that is not a member of its consolidated group in a transaction described in section 381(a), and the transferee corporation, or a member of the transferee's consolidated group, is a domestic owner of the transferred separate unit immediately after the transaction, then paragraphs (d)(1)(i) and (ii) of this section shall not apply to such transfer. In addition, income of the transferee, or a member of the transferee's consolidated group, that is attributable to the transferred separate unit may be offset by the carryover dual consolidated losses of the transferor domestic owner that were attributable to the transferred separate unit, subject to the limitations of paragraphs (b) and (c) of this section applied as if the transferee incurred the dual consolidated losses and such losses were attributable to the separate unit. See § 1.1503(d)–7(c) *Example 21.*

(*2*) *Combination with separate units of the transferee.* This paragraph (d)(2)(iii)(A)(*2*) applies to a transaction described in paragraph (d)(2)(iii)(A)(*1*) of this section where the transferred separate unit is combined with another separate unit of the transferee, or another member of the transferee's consolidated group, immediately after the transfer as provided under § 1.1503(d)–1(b)(4)(ii). In such a case, income generated by the transferee, or another member of the transferee's consolidated group, that is attributable to the combined separate unit may be offset by the carryover dual consolidated losses that were attributable to the transferred separate unit, subject to the limitations of paragraphs (b) and (c) of this section, applied as if the transferee incurred the dual consolidated losses and such losses were attributable to the combined separate unit.

(B) *Acquisition by a member of the same consolidated group.* If an affiliated domestic owner transfers its assets to another member of its consolidated group in a transaction described in section 381(a), and the transferee corporation or another member of such consolidated group is a domestic owner of the separate unit to which the dual consolidated loss was attributable, then paragraphs (d)(1)(i) and (ii) of this section shall not apply. In addition, income generated by the transferee that is attributable to the transferred separate unit may be offset by the carryover dual consolidated losses that were attributable to the transferred separate unit, subject to the limitations of paragraphs (b) and (c) of this section, applied as if the transferee incurred the dual consolidated losses and such losses were attributable to the separate unit. See § 1.1503(d)–7(c) *Example 21.*

(iv) *Special rules for foreign insurance companies.* See § 1.1503(d)–6(a) for additional limitations that apply where the transferor is a foreign insurance company that is a dual resident corporation under § 1.1503(d)–1(b)(2)(ii).

(e) *Special rule denying the use of a dual consolidated loss to offset tainted income*—(1) *In general.* Dual consolidated losses incurred by a dual resident corporation that are subject to the domestic use limitation rule under paragraph (b) of this section shall not be used to offset income it earns after it ceases to be a dual resident corporation to the extent that such income is tainted income.

(2) *Tainted income*—(i) *Definition.* For purposes of paragraph (e)(1) of this section, the term *tainted income* means—

(A) Income or gain recognized on the sale or other disposition of tainted assets; and

(B) Income derived as a result of holding tainted assets.

(ii) *Income presumed to be derived from holding tainted assets.* In the absence of evidence establishing the actual amount of income that is attributable to holding tainted assets, the portion of a corporation's income in a particular taxable year that is treated as tainted income derived as a result of holding tainted assets shall be an amount equal to the corporation's taxable income for the year (other than income described in paragraph (e)(2)(i)(A) of this section) multiplied by a fraction, the numerator of which is the fair market value of all tainted assets acquired by the corporation (determined at the time such assets were so acquired) and the denominator of which is the fair market value of the total assets owned by the corporation at the end of such taxable year. To establish the actual amount of income that is attributable to holding tainted assets, documentation must be attached to, and filed by the due date (including extensions) of, the domestic corporation's tax return or the consolidated tax return of an affiliated group of which it is a member, as the case may be, for the taxable year in which the income is generated. See § 1.1503(d)–7(c) *Example 22.*

(3) *Tainted assets defined.* For purposes of paragraph (e)(2) of this section, tainted assets are any assets acquired by a domestic corporation in a nonrecognition transaction, as defined in section 7701(a)(45), any assets otherwise transferred to the corporation

as a contribution to capital, or any assets otherwise received from a separate unit or a transparent entity owned by such domestic corporation, at any time during the three taxable years immediately preceding the taxable year in which the corporation ceases to be a dual resident corporation or at any time thereafter.

(4) *Exceptions.* Income derived from assets acquired by a domestic corporation shall not be subject to the limitation described in paragraph (e)(1) of this section, and in addition shall not be treated as tainted assets as defined in paragraph (e)(3) of this section, if—

(i) For the taxable year in which the assets were acquired, the corporation did not have a dual consolidated loss (or a carryforward of a dual consolidated loss to such year); or

(ii) The assets were acquired as replacement property in the ordinary course of business.

(f) *Computation of foreign tax credit limitation.* If a dual consolidated loss is subject to the domestic use limitation rule under paragraph (b) of this section, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner shall compute its foreign tax credit limitation by applying the limitations of paragraph (c) of this section. Thus, the items constituting the dual consolidated loss are not taken into account until the year in which such items are absorbed.

§ 1.1503(d)–5 Attribution of items and basis adjustments.

(a) *In general.* This section provides rules for determining the amount of income or dual consolidated loss of a dual resident corporation. This section also provides rules for determining the income or dual consolidated loss attributable to a separate unit, as well as the income or loss attributable to an interest in a transparent entity. Paragraph (b) of this section provides rules with respect to dual resident corporations. Paragraph (c) of this section provides rules with respect to separate units and interests in transparent entities. These determinations are required for various purposes under section 1503(d). For example, it is necessary for purposes of applying the domestic use limitation rule under § 1.1503(d)–4(b) to a dual consolidated loss, and for determining the extent to which a dual consolidated loss is available to offset income as provided under § 1.1503(d)–4(c). These determinations are also necessary for purposes of determining whether the amount subject to recapture may be reduced pursuant to § 1.1503(d)–6(h)(2). Paragraph (d) of this section provides rules with respect to the foreign tax treatment of items. Paragraph (e) of this section provides rules regarding the treatment of items where a dual resident corporation, separate unit, or transparent entity only qualified as such during a portion of a taxable year. Paragraph (f) of this section provides rules for determining the assets and liabilities of a separate unit. Finally, paragraph (g) of this section provides rules for making basis adjustments to stock of certain members of a consolidated group and to certain interests in partnerships. The rules in this section apply for purposes of §§ 1.1503(d)–1 through § 1.1503(d)–7.

(b) *Determination of amount of income or dual consolidated loss of a dual resident corporation*—(1) *In general.* For purposes of determining whether a dual resident corporation has income or a dual consolidated loss for the taxable year, and except as provided in paragraph (b)(2) of this section, the dual resident corporation shall compute its income or dual consolidated loss taking into account only those items of income, gain, deduction, and loss from such year (including any items recognized by such corporation as a result of an election under section 338). In the case of an affiliated dual resident corporation, such calculation shall be made in accordance with the rules set forth in the regulations under section 1502 governing the computation of consolidated taxable income. See also paragraphs (d) and (e) of this section.

(2) *Exceptions.* For purposes of determining the income or dual consolidated loss of a dual resident corporation, the following shall not be taken into account—

(i) Any net capital loss of the dual resident corporation;

(ii) Any carryover or carryback losses; or

(iii) Any items of income, gain, deduction, and loss that are attributable to a separate unit or an interest in a transparent entity of the dual resident corporation.

(c) *Determination of amount of income or dual consolidated loss attributable to a separate unit, and income or loss attributable to an interest in a transparent entity*—(1) *In general*—(i) *Scope and purpose.* Paragraphs (c) through (e) of this section apply for purposes of determining the income or dual consolidated loss attributable to a separate unit, and the income or loss attributable to an interest in a transparent entity, for the taxable year. In the case of an affiliated domestic owner, this determination shall be made in accordance with the rules set forth in the regulations under section 1502 governing the computation of consolidated taxable income. These rules apply solely for purposes of section 1503(d).

(ii) *Only items of domestic owner taken into account.* The computation made under paragraphs (c) through (e) of this section shall be made using only those existing items of income, gain, deduction, and loss of the separate unit's or transparent entity's domestic owner (or owners, in the case of certain combined separate units), as determined for U.S. tax purposes. These items must be translated into U.S. dollars (if necessary) at the appropriate exchange rate provided under section 989(b), as modified by regulations. The computation shall be made as if the separate unit or interest in a transparent entity were a domestic corporation, using items that are attributable to the separate unit or interest in a transparent entity. However, for purposes of making this computation, net capital losses, and carryover or carryback losses, of the domestic owner shall not be taken into account. Items of income, gain, deduction, and loss that are otherwise disregarded for U.S. tax purposes shall not be regarded or taken into account for purposes of this section. See § 1.1503(d)–7(c) *Examples 6* and *23* through *25.*

(iii) *Separate application.* The attribution rules of this section shall apply separately to each separate unit or interest in a transparent entity. Thus, an item of income, gain, deduction, or loss shall not be considered attributable to more than one separate unit or interest in a transparent entity. In addition, for purposes of this section items of income, gain, deduction, and loss attributable to a separate unit or an interest in a transparent entity shall not offset items of income, gain, deduction, and loss of another separate unit or interest in a transparent entity. See § 1.1503(d)–7(c) *Example 24.* See also the separate unit combination rule in § 1.1503(d)–1(b)(4)(ii).

(2) *Foreign branch separate unit*—(i) *In general.* Except to the extent provided in paragraph (c)(4) of this section, for purposes of determining the items of income, gain, deduction (other than interest), and loss of a domestic owner that are attributable to the domestic owner's foreign branch separate unit, the principles of section 864(c)(2), (c)(4), and (c)(5), as set forth in § 1.864–4(c), and §§ 1.864–5 through 1.864–7, shall apply. The principles apply without regard to limitations imposed on the effectively connected treatment of income, gain, or loss under the trade or business safe harbors in section 864(b) and the limitations for

treating foreign source income as effectively connected under section 864(c)(4)(D). Except as provided in paragraph (c)(2)(iii) of this section, for purposes of determining the domestic owner's interest expense that is attributable to a foreign branch separate unit, the principles of § 1.882–5, as modified in paragraph (c)(2)(ii) of this section, shall apply. When applying the principles of section 864(c) (as modified by this paragraph) and § 1.882–5 (as modified in paragraph (c)(2)(ii) of this section), the foreign branch separate unit's domestic owner shall be treated as a foreign corporation, the foreign branch separate unit shall be treated as a trade or business within the United States, and the other assets of the domestic owner shall be treated as assets that are not U.S. assets.

(ii) *Principles of § 1.882–5.* For purposes of paragraph (c)(2)(i) of this section, the principles of § 1.882–5 shall be applied, subject to the following modifications—

(A) Except as otherwise provided in this section, only the assets, liabilities, and interest expense of the domestic owner shall be taken into account in the § 1.882–5 formula;

(B) Except as provided under paragraph (c)(2)(ii)(C) of this section, a taxpayer may use the alternative tax book value method under § 1.861–9(i) for purposes of determining the value of its U.S. assets pursuant to § 1.882–5(b)(2) and its worldwide assets pursuant to § 1.882–5(c)(2);

(C) For purposes of determining the value of a U.S. asset pursuant to § 1.882–5(b)(2), and worldwide assets pursuant to § 1.882–5(c)(2), the taxpayer must use the same methodology under § 1.861–9T(g) (that is, tax book value, alternative tax book value, or fair market value) that the taxpayer uses for purposes of allocating and apportioning interest expense for the taxable year under section 864(e);

(D) Asset values shall be determined pursuant to § 1.861–9T(g)(2); and

(E) For purposes of determining the step-two U.S. connected liabilities, the amounts of worldwide assets and liabilities under § 1.882–5(c)(2)(iii) and (iv) must be determined in accordance with U.S. tax principles, rather than substantially in accordance with U.S. tax principles.

(iii) *Exception where foreign country attributes interest expense solely by reference to books and records.* The principles of § 1.882–5 shall not apply if the foreign country in which the foreign branch separate unit is located determines, for purposes of computing taxable income (or loss) of a permanent establishment or branch of a nonresident corporation under the laws of the foreign country, the interest expense of the foreign branch separate unit by taking into account only the items of interest expense reflected on the foreign branch separate unit's books and records. In such a case, only those items of the domestic owner's interest expense reflected on the foreign branch separate unit's books and records (as provided in paragraph (c)(3)(i) of this section), adjusted to conform to U.S. tax principles, shall be attributable to the foreign branch separate unit. This paragraph shall not apply where the foreign country does not use a method of attributing interest based solely on the interest that is reflected on the books and records. For example, this paragraph does not apply if the foreign country uses a method for attributing interest expense similar to § 1.882–5 or that set forth in the Organization for Economic Co-operation and Development Report on the Attribution of Profits to Permanent Establishments, Part II (Banks), December 2006. See *http://www.oecd.org*.

(3) *Hybrid entity separate unit and an interest in a transparent entity*—(i) *General rule.* This paragraph (c)(3) applies to determine the items of income, gain, deduction, and loss of a domestic owner that are attributable to a hybrid entity separate unit, or an interest in a transparent entity, of such domestic owner. Except to the extent provided in paragraph (c)(4) of this section, the domestic owner's items of income, gain, deduction, and loss are attributable to the extent they are reflected on the books and records of the hybrid entity or transparent entity, as applicable, as adjusted to conform to U.S. tax principles. See § 1.1503(d)–7(c) *Examples 23* through *26*. For purposes of this paragraph (c)(3), the term ''books and records'' has the meaning provided under § 1.989(a)–1(d). The treatment of items for foreign tax purposes, including under any type of foreign anti-deferral regime, is not relevant for purposes of determining whether items are reflected on the books and records of the entity, or for purposes of making adjustments to such items to conform to U.S. tax principles. The method described in the second sentence of this paragraph shall not apply to the extent that the Commissioner determines that booking practices are employed with a principal purpose of avoiding the principles of section 1503(d), including inconsistently treating the same or similar items of income, gain, deduction, and loss. In such a case, the Commissioner may reallocate the items of income, gain, deduction, and loss between or among a domestic owner, its hybrid entities, its transparent entities (and interests therein), its separate units, or any other entity, as applicable, in a manner consistent with the principles of section 1503(d) and which properly reflects income (or loss).

(ii) *Interests in certain disregarded entities, partnerships, and grantor trusts owned by a hybrid entity or transparent entity.* This paragraph (c)(3)(ii) applies if a hybrid entity or transparent entity to which paragraph (c)(3)(i) of this section applies owns, directly or indirectly (other than through a hybrid entity or transparent entity), an interest in an entity that is treated as a disregarded entity, partnership, or grantor trust for U.S. tax purposes, but is not a hybrid entity or a transparent entity. For example, the rules of this paragraph would apply when a hybrid entity holds an interest in a limited partnership created in the United States and, for both U.S. and foreign tax purposes the entity is considered a partnership. In such a case, and except to the extent provided in paragraph (c)(4) of this section, items of income, gain, deduction, and loss that are reflected on the books and records of such disregarded entity, partnership or grantor trust, as determined under paragraph (c)(3)(i) of this section, shall be treated as being reflected on the books and records of the hybrid entity or transparent entity for purposes of applying paragraph (c)(3)(i) of this section. See § 1.1503(d)–7(c) *Example 26*.

(4) *Special rules.* The following special rules shall apply for purposes of attributing items to separate units or interests in transparent entities under this section:

(i) *Allocation of items between certain tiered separate units and interests in transparent entities*—(A) *Foreign branch separate unit.* This paragraph (c)(4)(i) applies where a hybrid entity or transparent entity owns directly or indirectly (other than through a hybrid entity or a transparent entity), a foreign branch separate unit. For purposes of determining items of income, gain, deduction, and loss of the domestic owner that are attributable to the domestic owner's foreign branch separate unit described in the preceding sentence, only items of income, gain, deduction, and loss that are attributable to the domestic owner's interest in the hybrid entity, or transparent entity, as provided in paragraph (c)(2) of this section, shall be taken into account. Further, only assets, liabilities, and activities of the domestic owner's interest in the hybrid entity or the transparent entity shall be taken into

account under paragraph (c)(2) of this section when applying the principles of 864(c)(2), (c)(4), (c)(5) (as set forth in § 1.864–4(c), and §§ 1.864–5 through 1.864–7), and § 1.882–5 (as modified in paragraph (c)(2)(ii) of this section). See § 1.1503(d)–7(c) *Examples 25* and *26*.

(B) *Hybrid entity separate unit or interest in a transparent entity.* For purposes of determining items of income, gain, deduction, and loss that are attributable to a hybrid entity separate unit or an interest in a transparent entity described in paragraph (c)(3) of this section, such items shall not be taken into account to the extent they are attributable to a foreign branch separate unit pursuant to paragraph (c)(4)(i)(A) of this section. See § 1.1503(d)–7(c) *Examples 25* and *26.*

(ii) *Combined separate unit.* If two or more individual separate units defined in § 1.1503(d)–1(b)(4)(i) are treated as one combined separate unit pursuant to § 1.1503(d)–1(b)(4)(ii), the items of income, gain, deduction, and loss that are attributable to the combined separate unit shall be determined as follows:

(A) Items of income, gain, deduction, and loss are first attributed to each individual separate unit without regard to § 1.1503(d)–1(b)(4)(ii), pursuant to the rules of paragraphs (c) through (e) of this section.

(B) The combined separate unit then takes into account all of the items of income, gain, deduction, and loss attributable to its individual separate units pursuant to paragraph (c)(4)(ii)(A) of this section. See § 1.1503(d)–7(c) *Examples 25* and *26.*

(iii) *Gain or loss on the direct or indirect disposition of a separate unit or an interest in a transparent entity*—(A) *In general.* This paragraph (c)(4)(iii) applies for purposes of attributing items of income, gain, deduction, and loss that are recognized on the sale, exchange, or other disposition of a separate unit or an interest in a transparent entity (or an interest in a disregarded entity, partnership, or grantor trust that owns, directly or indirectly, a separate unit or an interest in a transparent entity). For purposes of this paragraph (c)(4)(iii), items taken into account on the sale, exchange, or other disposition include loss recapture income or gain under section 367(a)(3)(C) or 904(f)(3), and gain or loss recognized by the domestic owner as the result of an election under section 338. In cases where this paragraph (c)(4)(iii)(A) applies, items taken into account on the sale, exchange, or other disposition shall be attributable to the separate unit or the interest in the transparent entity to the extent of gain or loss that would have been recognized had the separate unit or transparent entity sold all its assets (as determined in paragraph (f) of this section) in a taxable exchange, immediately before the sale, exchange, or other disposition (deemed sale). For purposes of a deemed sale described in this paragraph (c)(4)(iii), the assets are treated as being sold for an amount equal to their fair market value, plus the assumption of the liabilities of the separate unit or interest in a transparent entity (as determined in paragraph (f) of this section). See § 1.1503(d)–7(c) *Example 27.*

(B) *Multiple separate units or interests in transparent entities.* This paragraph (c)(4)(iii)(B) applies to a sale, exchange, or other disposition described in paragraph (c)(4)(iii)(A) of this section that results in more than one separate unit or interest in a transparent entity being, directly or indirectly, disposed of. In such a case, items of income, gain, deduction, and loss recognized on such sale, exchange, or other disposition are allocated and attributed to each separate unit or interest in a transparent entity, based on the relative gain or loss that would have been recognized by each separate unit or interest in a transparent entity pursuant to a deemed sale of their assets. See § 1.1503(d)–7(c) *Example 28.*

(iv) *Inclusions on stock.* Any amount included in income of a domestic owner arising from ownership of stock in a foreign corporation (for example, under sections 78, 951, or 986(c)) through a separate unit, or interest in a transparent entity, shall be attributable to the separate unit or interest in a transparent entity, if an actual dividend from such foreign corporation would have been so attributed. See § 1.1503(d)–7(c) *Example 24.*

(v) *Foreign currency gain or loss recognized under section 987.* Foreign currency gain or loss of a domestic owner recognized under section 987 as a result of a transfer or remittance shall not be attributable to a separate unit or an interest in a transparent entity.

(vi) *Recapture of dual consolidated loss.* If all or a portion of a dual consolidated loss that was attributable to a separate unit is included in the gross income of a domestic owner under the recapture provisions of § 1.1503(d)–6(h), such amount shall be attributable to the separate unit that incurred the dual consolidated loss being recaptured. See § 1.1503(d)–7(c) *Examples 38* and *40.*

(d) *Foreign tax treatment disregarded.* The fact that a particular item taken into account in computing the income or dual consolidated loss of a dual resident corporation or a separate unit, or the income or loss of an interest in a transparent entity, is not taken into account in computing income (or loss) subject to a foreign country's income tax shall not cause such item to be excluded from being taken into account under paragraph (b), (c) or (e) of this section.

(e) *Items generated or incurred while a dual resident corporation, a separate unit, or a transparent entity.* For purposes of determining the amount of the dual consolidated loss of a dual resident corporation for the taxable year, only the items of income, gain, deduction, and loss generated or incurred during the period the dual resident corporation qualified as such shall be taken into account. For purposes of determining the amount of income of a dual resident corporation for the taxable year, all the items of income, gain, deduction, and loss generated or incurred during the year shall be taken into account. For purposes of determining the amount of the income or dual consolidated loss attributable to a separate unit, or the income or loss attributable to an interest in a transparent entity, for the taxable year, only the items of income, gain, deduction, and loss generated or incurred during the period the separate unit or the interest in the transparent entity qualified as such shall be taken into account. For purposes of this paragraph (e), the allocation of items to periods shall be made under the principles of § 1.1502–76(b).

(f) *Assets and liabilities of a separate unit or an interest in a transparent entity.* A separate unit or an interest in a transparent entity shall be treated as owning assets to the extent items of income, gain, deduction, and loss from such assets would be attributable to the separate unit or interest in the transparent entity under paragraphs (c) through (e) of this section. Similarly, liabilities shall be treated as liabilities of a separate unit, or an interest in a transparent entity, to the extent interest expense incurred on such liabilities would be attributable to the separate unit, or the interest in a transparent entity, under paragraphs (c) through (e) of this section.

(g) *Basis adjustments*—(1) *Affiliated dual resident corporation or affiliated domestic owner.* If a member of a consolidated group owns stock in an affiliated dual resident corporation or an affiliated domestic owner that is a member of the same consolidated group, the member shall adjust the basis of the stock in accordance with the provisions of § 1.1502–32. Corresponding adjustments shall be made to the stock of other members in accordance with the provisions of § 1.1502–32. In the case where two or more individual

separate units are treated as a combined separate unit pursuant to § 1.1503(d)–1(b)(4)(ii), see paragraph (g)(3) of this section.

(2) *Interests in hybrid entities that are partnerships or interests in partnerships through which a separate unit is owned indirectly*—(i) *Scope.* This paragraph (g)(2) applies for purposes of determining the adjusted basis of an interest in—

(A) A hybrid entity that is a partnership; and

(B) A partnership through which a domestic owner indirectly owns a separate unit.

(ii) *Determination of basis of partner's interest.* The adjusted basis of an interest described in paragraph (g)(2)(i) of this section shall be adjusted in accordance with section 705 and this paragraph (g)(2). The adjusted basis shall not be decreased for any amount of a dual consolidated loss that is attributable to the partnership interest, or separate unit owned indirectly through the partnership interest, as applicable, that is not absorbed as a result of the application of § 1.1503(d)–4(b) and (c). The adjusted basis shall, however, be decreased for the amount of such dual consolidated loss that is absorbed in a carryover or carryback taxable year. The adjusted basis shall be increased for any amount included in income pursuant to § 1.1503(d)–6(h) as a result of the recapture of a dual consolidated loss that was attributable to the interest in the hybrid partnership, or separate unit owned indirectly through the partnership interest, as applicable.

(3) *Combined separate units.* This paragraph (g)(3) applies where two or more individual separate units of one or more affiliated domestic owners are treated as one combined separate unit pursuant to § 1.1503(d)–1(b)(4)(ii). In such a case, a member owning stock in an affiliated domestic owner of the combined separate unit shall adjust the basis in the stock of such domestic owner as provided in paragraph (g)(1) of this section, and an affiliated domestic owner shall adjust its basis in a partnership, as provided in paragraph (g)(2) of this section, taking into account only those items of income, gain, deduction, or loss attributable to each individual separate unit, prior to combination. For purposes of this rule, if the dual consolidated loss attributable to a combined separate unit is subject to the domestic use limitation of § 1.1503(d)–4(b), then for purposes of this paragraph (g) and § 1.1502–32, the dual consolidated loss shall be allocated to an individual separate unit to the extent such individual separate unit contributed items of deduction or loss giving rise to the dual consolidated loss. In addition, if one or more affiliated domestic owners are required to recapture all or a portion of a dual consolidated loss pursuant to paragraph (h) of this section, such recapture amount shall be allocated to the affiliated domestic owner of the individual separate units composing the combined separate unit, to the extent such individual separate units contributed items of deduction or loss giving rise to the recaptured dual consolidated loss.

§ 1.1503(d)–6 Exceptions to the domestic use limitation rule.

(a) *In general*—(1) *Scope and purpose.* This section provides certain exceptions to the domestic use limitation rule of § 1.1503(d)–4(b). Paragraph (b) of this section provides an exception for bilateral elective agreements. Paragraph (c) of this section provides rules regarding an exception that applies when there is no possibility of a foreign use. Paragraphs (d) through (h) of this section provide rules for an exception where a domestic use election is made. Paragraph (e) of this section provides rules with respect to triggering events, and paragraph (f) of this section provides rules regarding exceptions to triggering events. Paragraph (g) of this section provides rules with respect to the annual certification reporting requirement. Paragraph (h) of this section provides rules regarding the recapture of dual consolidated losses. Finally, paragraph (j) of this section provides rules regarding the termination of domestic use agreements and the annual certification requirement.

(2) *Absence of foreign affiliate or foreign consolidation regime.* The absence of a foreign affiliate or a foreign consolidation regime alone does not constitute an exception to the domestic use limitation rule. This is the case because it is still possible that all or a portion of the dual consolidated loss may be put to a foreign use. For example, there may be a foreign use with respect to an affiliate acquired in a year subsequent to the year in which the dual consolidated loss was incurred. In addition, a foreign use may occur in the absence of a foreign consolidation regime through a sale, merger, or similar transaction. See § 1.1503(d)–7(c) *Example 2.*

(3) *Foreign insurance companies treated as domestic corporations.* The exceptions contained in this section shall not apply to losses of a foreign insurance company that is a dual resident corporation under § 1.1503(d)–1(b)(2)(ii), or to losses attributable to any separate unit of such foreign insurance company. In addition, these exceptions shall not apply to losses described in the preceding sentence that, subject to the rules of § 1.1503(d)–4(d), carry over to a domestic corporation pursuant to a transaction described in section 381(a).

(b) *Elective agreement in place between the United States and a foreign country*—(1) *In general.* The domestic use limitation rule of § 1.1503(d)–4(b) shall not apply to a dual consolidated loss to the extent the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, elects to deduct the loss in the United States pursuant to an agreement entered into between the United States and a foreign country that puts into place an elective procedure through which losses in a particular year may be used to offset income in only one country. This exception shall apply only if all the terms and conditions required under such agreement are satisfied, including any reporting or filing requirements. See § 1.1503(d)–3(e)(2)(iii) for the effect of an agreement described in this paragraph on a stand-alone domestic use agreement.

(2) *Application to combined separate units.* This paragraph (b)(2) applies where two or more individual separate units are treated as one combined separate unit pursuant to § 1.1503(d)–1(b)(4)(ii), and an agreement described in paragraph (b)(1) of this section would apply to at least one of the individual separate units. In such a case, and except to the extent provided in the agreement, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, may apply the agreement to the individual separate units, as applicable, provided the terms and conditions of the agreement are otherwise satisfied. See § 1.1503(d)–7(c) *Example 19.*

(c) *No possibility of foreign use*—(1) *In general.* The domestic use limitation rule of § 1.1503(d)–4(b) shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be—

(i) Demonstrates, to the satisfaction of the Commissioner, that no foreign use (as defined in § 1.1503(d)–3) of the dual consolidated loss occurred in the year in which it was incurred, and that no foreign use can occur in any other year by any means; and

(ii) Prepares a statement described in paragraph (c)(2) of this section that is attached to, and filed by the due date (including extensions) of, its U.S. income tax return for the taxable year in

which the dual consolidated loss is incurred. See § 1.1503(d)–7(c) *Examples 2, 30,* and *31.*

(2) *Statement.* The statement described in this paragraph (c)(2) must be signed under penalties of perjury by the person who signs the tax return. The statement must be labeled ''No Possibility of Foreign Use of Dual Consolidated Loss Statement'' at the top of the page and must include the following items, in paragraphs labeled to correspond with the items set forth in paragraphs (c)(2)(i) through (iv) of this section:

(i) A statement that the document is submitted under the provisions of paragraph (c) of this section.

(ii) The name, address, taxpayer identification number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located. In the case of a combined separate unit, such information must be provided for each individual separate unit that is treated as part of the combined separate unit under § 1.1503(d)–1(b)(4)(ii).

(iii) A statement of the amount of the dual consolidated loss at issue.

(iv) An analysis, in reasonable detail and specificity, of the treatment of the losses and deductions composing the dual consolidated loss under the relevant facts. The analysis must include the reasons supporting the conclusion that no foreign use of the dual consolidated loss can occur as described in paragraph (c)(1)(i) of this section. The analysis must be supported with official or certified English translations of the relevant provisions of foreign law. The analysis may, for example, be based on the taxpayer's interpretation of foreign law, on advice received from local tax advisers in an opinion, or on a ruling from local country tax authorities. In all cases, however, the determination must be made to the satisfaction of the Commissioner.

(d) *Domestic use election*—(1) *In general.* The domestic use limitation rule of § 1.1503(d)–4(b) shall not apply to a dual consolidated loss if an election to be bound by the provisions of paragraphs (d) through (j) of this section is made by the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be (elector). In order to elect such relief, an agreement described in this paragraph (d)(1) (domestic use agreement) must be attached to, and filed by the due date (including extensions) of, the U.S. income tax return of the elector for the taxable year in which the dual consolidated loss is incurred. The domestic use agreement must be signed under penalties of perjury by the person who signs the return. If dual consolidated losses of more than one dual resident corporation or separate unit requires the filing of domestic use agreements by the same elector, the agreements may be combined in a single document, but the information required by paragraphs (d)(1)(ii) and (iv) of this section must be provided separately with respect to each dual consolidated loss. The domestic use agreement must be labeled ''Domestic Use Election and Agreement'' at the top of the page and must include the following items, in paragraphs labeled to correspond with the following:

(i) A statement that the document submitted is an election and an agreement under the provisions of paragraph (d) of this section.

(ii) The information required by paragraph (c)(2)(ii) of this section.

(iii) An agreement by the elector to comply with all of the provisions of paragraphs (d) through (j) of this section, as applicable.

(iv) A statement of the amount of the dual consolidated loss at issue.

(v) A certification that there has not been, and will not be, a foreign use (as defined in § 1.1503(d)–3) during the certification period (as defined in § 1.1503(d)–1(b)(20)).

(vi) A certification that arrangements have been made to ensure that there will be no foreign use of the dual consolidated loss during the certification period, and that the elector will be informed of any such foreign use of the dual consolidated loss during such period.

(vii) If applicable, a notification that an excepted triggering event under paragraph (f)(2) of this section has occurred with respect to the dual consolidated loss within the taxable year in which the loss is incurred. See paragraph (g) of this section for notification of excepted triggering events occurring during the certification period.

(2) *No domestic use election available if there is a triggering event in the year the dual consolidated loss is incurred.* Except as otherwise provided in this section, if a dual resident corporation or separate unit incurs a dual consolidated loss in a taxable year and a triggering event, as described in paragraph (e)(1) of this section, occurs (and no exception applies) with respect to the dual consolidated loss in such taxable year, then the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, may not make a domestic use election with respect to such dual consolidated loss and the loss will be subject to the domestic use limitation rule of § 1.1503(d)–4(b). See § 1.1503(d)–7(c) *Examples 5* through *7.* See also § 1.1503(d)–4(d) for rules that eliminate a dual consolidated loss after certain transactions.

(e) *Triggering events requiring the recapture of a dual consolidated loss*—(1) *Events.* Except as provided under paragraphs (e)(2) (rebuttal of triggering events) and (f) (exceptions to triggering events) of this section, if there is a triggering event described in this paragraph (e)(1) with respect to a dual consolidated loss of a dual resident corporation or a separate unit during the certification period (as defined in § 1.1503(d)–1(b)(20)), the elector will recapture and report as ordinary income the amount of such dual consolidated loss as provided in paragraph (h) of this section on its tax return for the taxable year in which the triggering event occurs (or, when the triggering event is a foreign use of the dual consolidated loss, the taxable year that includes the last day of the foreign taxable year during which such use occurs). In addition, the elector must pay any applicable interest charge required by paragraph (h) of this section. For purposes of this section, any of the following events shall constitute a triggering event:

(i) *Foreign use.* A foreign use (as defined in § 1.1503(d)–3) of the dual consolidated loss. See § 1.1503(d)–3(c) for exceptions to foreign use.

(ii) *Disaffiliation.* An affiliated dual resident corporation or affiliated domestic owner that incurred directly or through a separate unit, respectively, a dual consolidated loss that is subject to a domestic use election, ceases to be a member of the consolidated group that made the domestic use election. For purposes of this paragraph (e)(1)(ii), an affiliated dual resident corporation or affiliated domestic owner shall be considered to cease to be a member of the consolidated group if it is no longer a member of the group within the meaning of § 1.1502–1(b), or if the group ceases to exist (for example, when the group no longer files a consolidated return). See § 1.1503(d)–7(c) *Example 34.* Any consequences resulting from this triggering event (for example, recapture of a dual consolidated loss) shall be taken into account on the tax return of the consolidated group for the

taxable year that includes the date on which the affiliated dual resident corporation or affiliated domestic owner ceases to be a member of the consolidated group. This paragraph (e)(1)(ii) shall not apply to an acquisition described in § 1.1502–75(d)(3) where the consolidated group that includes the affiliated dual resident corporation or affiliated domestic owner, as applicable, is treated as remaining in existence.

(iii) *Affiliation.* An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group. Any consequences resulting from this triggering event (for example, recapture of a dual consolidated loss) shall be taken into account on the tax return of the unaffiliated dual resident corporation or unaffiliated domestic owner for the taxable year that ends at the end of the day on which such corporation becomes a member of the consolidated group.

(iv) *Transfer of assets.* Fifty percent or more of the dual resident corporation's or separate unit's gross assets (measured by the fair market value of the assets at the time of such transaction or, for multiple transactions, at the time of the first transaction) is sold or otherwise disposed of in either a single transaction or a series of transactions within a twelve-month period. See § 1.1503(d)–7(c) *Examples 5* and *35* through *37.* In determining whether fifty percent or more of such assets is sold or otherwise disposed of, any dispositions occurring in the ordinary course of the dual resident corporation's or separate unit's trade or business shall be disregarded. In addition, for purposes of this paragraph (e)(1)(iv), an interest in another separate unit and the shares of a dual resident corporation shall not be treated as assets of a separate unit or a dual resident corporation.

(v) *Transfer of an interest in a separate unit.* Fifty percent or more of the interest in a separate unit (measured by voting power or value at the time of such transaction, or for multiple transactions, at the time of the first transaction) of the domestic owner, as determined by reference to such domestic owner's percentage interest on the last day of the taxable year in which the dual consolidated loss was incurred, is sold or otherwise disposed of either in a single transaction or a series of transactions within a twelve-month period. See § 1.1503(d)–7(c) *Examples 5* and *35* through *37.*

(vi) *Conversion to a foreign corporation.* An unaffiliated dual resident corporation, unaffiliated domestic owner, or hybrid entity an interest in which is a separate unit, that incurred the dual consolidated loss, becomes a foreign corporation (for example, as a result of a reorganization or an election to be classified as a corporation under § 301.7701–3(c) of this chapter).

(vii) *Conversion to a regulated investment company, a real estate investment trust, or an S corporation.* An unaffiliated dual resident corporation or unaffiliated domestic owner elects to be a regulated investment company pursuant to section 851(b)(1), a real estate investment trust pursuant to section 856(c)(1), or an S corporation pursuant to section 1362(a).

(viii) *Failure to certify.* The elector fails to file a certification with respect to a dual consolidated loss as required under paragraph (g) of this section.

(ix) *Cessation of stand-alone status.* In the case of a dual consolidated loss that is subject to the stand-alone exception described in § 1.1503(d)–3(e)(2), the conditions described in § 1.1503(d)–3(e)(2)(i) are no longer satisfied. See § 1.1503(d)–7(c) *Example 18.*

(2) *Rebuttal*—(i) *General rule.* An event described in paragraph (e)(1) of this section shall not constitute a triggering event if the elector demonstrates, to the satisfaction of the Commissioner, that there can be no foreign use (as defined in § 1.1503(d)–3) of the dual consolidated loss during the remaining certification period by any means. See paragraph (j)(1) of this section for rules regarding the termination of domestic use agreements and annual certifications following rebuttals under this general rule.

(ii) *Certain asset transfers.* An event described in paragraph (e)(1)(iv) of this section shall not constitute a triggering event if the elector demonstrates, to the satisfaction of the Commissioner, that the transfer of assets did not result in a carryover under foreign law of the dual resident corporation's, or separate unit's, losses, expenses, or deductions to the transferee of the assets. For purposes of this determination, the exception to foreign use in § 1.1503(d)–3(c)(7) shall be taken into account. Following rebuttal under this paragraph (e)(2)(ii), the domestic use agreement continues in effect.

(iii) *Reporting.* In order to satisfy the requirements of paragraph (e)(2)(i) or (ii) of this section, the elector must prepare a statement, labeled ''Rebuttal of Triggering Event'' at the top of the page, that indicates that it is submitted under the provisions of this paragraph (e)(2). The statement must include the information described in paragraphs (c)(2)(ii) and (iii) of this section. The statement must also include the information described in paragraph (c)(2)(iv) of this section that supports the conclusions under paragraph (e)(2)(i) or (ii) of this section, as applicable. The statement must be attached to, and filed by the due date (including extensions) of, the elector's income tax return for the taxable year in which the presumed triggering event occurs.

(iv) *Examples.* See § 1.1503(d)–7(c) *Examples 32* and *33.*

(f) *Triggering event exceptions*—(1) *Continuing ownership of assets or interests.* The following events shall not constitute triggering events, requiring the recapture of the dual consolidated loss under paragraph (h) of this section:

(i) *Disaffiliation as a result of a transaction described in section 381.* An affiliated dual resident corporation or affiliated domestic owner ceases to be a member of a consolidated group solely by reason of a transaction in which a member of the same consolidated group succeeds to the tax attributes of the dual resident corporation or domestic owner under the provisions of section 381.

(ii) *Continuing ownership by consolidated group.* This paragraph (f)(1)(ii) applies when assets of an affiliated dual resident corporation, or assets of, or interests in, a separate unit of an affiliated domestic owner are sold or otherwise disposed of. In such a case, the sale or disposition shall not be treated as a triggering event to the extent the assets or interests are acquired by one or more members of the consolidated group that includes the affiliated dual resident corporation or affiliated domestic owner, or by a partnership or a grantor trust, but only if immediately after the acquisition more than 90 percent of the partnership's or grantor trust's interests is owned, directly or indirectly, by members of such consolidated group.

(iii) *Continuing ownership by unaffiliated dual resident corporation or unaffiliated domestic owner.* This paragraph (f)(1)(iii) applies when assets of an unaffiliated dual resident corporation, or assets of, or interests in, a separate unit of an unaffiliated domestic owner, are sold or otherwise disposed of. In such a case, the sale or disposition shall not be a triggering event to the extent such assets or interests are acquired by the unaffiliated dual resident corporation, or unaffiliated domestic owner, as applicable, or by a partnership or grantor trust, but only if immediately after the acquisition more than 90 percent of the partnership's or grantor trust's interests is owned, directly or indirectly, by the unaffiliated dual resident corporation or unaffiliated

domestic owner. For example, this paragraph (f)(1)(iii) applies when an unaffiliated domestic owner acquires direct ownership of the assets of a separate unit that it had immediately before owned indirectly through a partnership.

(2) *Transactions requiring a new domestic use agreement*—(i) *Multiple-party events.* If all the requirements of paragraph (f)(2)(iii) of this section are satisfied, the following events shall not constitute triggering events requiring the recapture of the dual consolidated loss under paragraph (h) of this section:

(A) An affiliated dual resident corporation or affiliated domestic owner becomes an unaffiliated domestic corporation or a member of a new consolidated group (other than in a transaction described in paragraph (f)(2)(ii)(B) of this section).

(B) Assets of a dual resident corporation or assets of, or interests in, a separate unit, are sold or otherwise disposed of in a transaction in which such assets or interests are acquired by an unaffiliated domestic corporation, one or more members of a new consolidated group, or by a partnership or grantor trust, but only if immediately after the sale or disposition more than 90 percent of the partnership's or grantor trust's interests is owned, directly or indirectly, by the unaffiliated domestic owner or by members of a new consolidated group, as applicable. See the related exception to foreign use provided under § 1.1503(d)–3(c)(8). See also § 1.1503(d)–7(c) *Examples 36* and *37*.

(ii) *Events resulting in a single consolidated group.* If the requirements of paragraph (f)(2)(iii)(A) of this section are satisfied, the following events shall not constitute triggering events requiring the recapture of the dual consolidated loss under paragraph (h) of this section:

(A) An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group.

(B) A consolidated group ceases to exist as a result of a transaction described in § 1.1502–13(j)(5)(i) (relating to acquisitions of the common parent of the consolidated group), other than a transaction in which any member of the terminating group, or the successor-in-interest of such member, is not a member of the surviving group immediately after the terminating group ceases to exist. See § 1.1503(d)–7(c) *Example 34*.

(iii) *Requirements*—(A) *New domestic use agreement.* The unaffiliated domestic corporation or new consolidated group (subsequent elector) must file an agreement described in paragraph (d)(1) of this section (new domestic use agreement). The new domestic use agreement must be labeled ''New Domestic Use Agreement'' at the top of the page, and must be attached to and filed by the due date (including extensions) of, the subsequent elector's income tax return for the taxable year in which the event described in paragraph (f)(2)(i) or (f)(2)(ii) of this section occurs. The new domestic use agreement must be signed under penalties of perjury by the person who signs the return and must include the following items:

(*1*) A statement that the document submitted is an election and agreement under the provisions of paragraph (f)(2) of this section.

(*2*) An agreement to assume the same obligations with respect to the dual consolidated loss as the unaffiliated dual resident corporation, unaffiliated domestic owner, or consolidated group, as applicable, that filed the original domestic use agreement (original elector) with respect to that loss. In such a case, obligations of an elector provided under this section shall also be considered to be obligations of a subsequent elector.

(*3*) In the event of a transaction described in section 384(a) involving the subsequent elector, an agreement to treat any potential recapture amount under paragraph (h) of this section with respect to the dual consolidated loss as unrealized built-in gain for purposes of section 384(a), subject to any applicable exceptions (for example, the threshold requirements under section 382(h)(3)(B)). The potential recapture amount treated as unrealized built-in gain under this paragraph (f)(2)(iii)(A)(*3*) may be reduced to the extent permitted by paragraph (h)(2)(i) of this section.

(*4*) In the case of a multiple-party event described in paragraph (f)(2)(i) of this section, an agreement to be subject to the rules provided in paragraph (h)(3) of this section.

(*5*) The name, U.S. taxpayer identification number, and address of the original elector and prior subsequent electors, if any, with respect to the dual consolidated loss.

(B) *Statement filed by original elector.* In the case of a multiple-party event described in paragraph (f)(2)(i) of this section, the original elector must file a statement that is attached to and filed by the due date (including extensions) of its income tax return for the taxable year in which the event occurs. The statement must be labeled ''Original Elector Statement'' at the top of the page, must be signed under penalties of perjury by the person who signs the tax return, and must include the following items:

(*1*) A statement that the document submitted is an election and agreement under the provisions of paragraph (f)(2) of this section.

(*2*) An agreement to be subject to the rules provided in paragraph (h)(3) of this section.

(*3*) The name, U.S. taxpayer identification number, and address of the subsequent elector.

(3) *Certain transfers qualifying for the de minimis exception to foreign use.* If a transaction or event qualifies for the de minimis exception to foreign use described in § 1.1503(d)–3(c)(5), the transaction or event shall not constitute a triggering event under paragraph (e)(1)(iv) (transfers of assets) or (v) (transfers of an interest in a separate unit) of this section. For purposes of the preceding sentence, the transaction or event shall include deemed transfers that occur as a result of the transaction or event. See, for example, deemed transfers occurring pursuant to Rev. Rul. 99–5 (1999–1 CB 434), see § 601.601(d)(2)(ii)(*b*), and section 708 and the related regulations. See also § 1.1503(d)–7 *Example 5.* This paragraph (f)(3) only applies if the entire transaction or event qualifies for the de minimis exception to foreign use. For example, if a domestic owner sells five percent of a separate unit to a foreign corporation, which would qualify for the de minimis exception to foreign use if it were the only transfer, but pursuant to the same transaction also sells 70 percent of the same separate unit to another corporation in a manner that results in a triggering event under paragraph (e)(1)(v) of this section, this paragraph shall not apply to prevent the transaction from resulting in a triggering event.

(4) *Deemed transactions as a result of certain transfers that do not result in a foreign use.* The rules in this paragraph (f)(4) apply where the assets of, or the interests in, a separate unit are transferred in a transaction that would not result in a foreign use and, but for resulting deemed transactions or events, would not result in a triggering event described in paragraph (e)(1) of this section. For purposes of this paragraph (f)(4), deemed transactions or events shall include transactions or events that are deemed to occur pursuant to Rev. Rul. 99–5 and section 708 and the related regulations. In such a case, the deemed transactions shall not result in a triggering event under paragraph (e)(1)(iv) (transfers of assets) or (v) (transfers of an interest in a separate unit) of this section. See also § 1.1503(d)–7 *Example 35.*

(5) *Compulsory transfers.* Transfers of the assets or stock of a dual resident corporation, or of the assets or interests in a separate unit, shall not constitute a triggering event (including a foreign use that occurs as a result of, or following, the transfer) if such transfers are—

(i) Legally required by a foreign government as a necessary condition of doing business in a foreign country;

(ii) Compelled by a genuine threat of immediate expropriation by a foreign government; or

(iii) The result of the expropriation of assets by the foreign government.

(6) *Subsequent triggering events.* Any triggering event described in paragraph (e) of this section that occurs subsequent to one of the transactions described in this paragraph (f), and that itself does not meet any of the exceptions provided in this paragraph (f), shall require recapture under paragraph (h) of this section by the elector or subsequent elector, as applicable.

(g) *Annual certification reporting requirement.* Unless and until the domestic use agreement is terminated pursuant to paragraph (j) of this section, the elector must file a certification, labeled ''Certification of Dual Consolidated Loss'' at the top of the page, that is attached to, and filed by the due date (including extensions) of, its income tax return for each taxable year during the certification period. The certification must provide that there has been no foreign use of the dual consolidated loss. The certification must identify the dual consolidated loss to which it pertains by setting forth the elector's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that there will be no foreign use of the dual consolidated loss and that the elector will be informed of any such foreign use. If applicable, the certification must include a notification that an excepted triggering event under paragraph (f)(2) of this section has occurred with respect to the dual consolidated loss within the taxable year being certified. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g), the certification for those years may be combined in a single document, but each dual consolidated loss must be separately identified. See § 1.1503(d)–3(e)(2)(ii) for additional certifications required where taxpayers elect the stand-alone exception of § 1.1503(d)–3(e)(2).

(h) *Recapture of dual consolidated loss and interest charge*—(1) *Presumptive rules*—(i) *Amount of recapture.* Except as otherwise provided in this section, upon the occurrence of a triggering event described in paragraph (e) of this section that does not meet any of the exceptions provided in paragraph (f) of this section, the dual resident corporation or domestic owner of the separate unit shall recapture as gross income the total amount of the dual consolidated loss to which the triggering event applies on its income tax return for the taxable year in which the triggering event occurs (or, when the triggering event is a foreign use of the dual consolidated loss, the taxable year that includes the last day of the foreign taxable year during which such foreign use occurs). See § 1.1503(d)–5(c)(4)(vi) for rules with respect to the attribution of recapture income to a separate unit. See also § 1.1503(d)–7 *Examples 38* through *40*.

(ii) *Interest charge.* In connection with the recapture, the elector shall pay an interest charge. An interest charge may be due even if the amount of recapture income is reduced to zero pursuant to paragraph (h)(2)(i) of this section. See § 1.1503(d)–7(c) *Example 39*. Except as otherwise provided in this section, the amount of the interest shall be computed under the rules of section 6601(a) by treating the additional tax resulting from the recapture as though it had been due and unpaid as of the date for payment of the tax for the taxable year in which the taxpayer received a tax benefit from the dual consolidated loss. For purposes of this paragraph (h)(1)(ii), a tax benefit shall be considered to have arisen in a taxable year in which the losses or deductions taken into account in computing the dual consolidated loss reduced U.S. taxable income. For the purpose of computing the interest charge, the additional tax resulting from the recapture is determined by treating the recapture income as the last income earned in the year of recapture. The interest shall be computed to the date for payment of the tax for the year of recapture and the interest thus computed becomes a part of the tax liability for that taxable year. See section 6601 for the computation of interest on a tax liability that it is not paid timely. The recapture interest charge shall be deductible to the same extent as interest under section 6601.

(2) *Reduction of presumptive recapture amount and presumptive interest charge*—(i) *Amount of recapture.* The dual resident corporation or domestic owner may recapture an amount less than the total dual consolidated loss if the elector demonstrates, to the satisfaction of the Commissioner, the lesser amount described in this paragraph (h)(2)(i). The reduction in the amount of recapture is the amount by which the dual consolidated loss would have offset other taxable income reported on a timely filed U.S. income tax return for any taxable year up to and including the taxable year of the triggering event (or, when the triggering event is a foreign use of the dual consolidated loss, the taxable year that includes the last day of the foreign taxable year during which such foreign use occurs) if no domestic use election had been made for the loss such that it was subject to the domestic use limitation of § 1.1503(d)–4(b) (and therefore subject to the limitation under § 1.1503(d)–4(c)). For this purpose, the rules for attributing items of income, gain, deduction, and loss under § 1.1503(d)–5 shall apply. An elector using this rebuttal rule must prepare a separate accounting showing the income for each year that would have offset the dual resident corporation's or separate unit's recapture amount if no domestic use election had been made for the dual consolidated loss. The separate accounting must be signed under penalties of perjury by the person who signs the elector's tax return, must be labeled ''Reduction of Recapture Amount'' at the top of the page, and must indicate that it is submitted under the provisions of this paragraph (h)(2)(i). The accounting must be attached to, and filed by the due date (including extensions) of, the elector's income tax return for the taxable year in which the triggering event occurs. See § 1.1503(d)–7(c) *Examples 38* through *40*.

(ii) *Interest charge.* The interest charge imposed under this section may be reduced if the elector demonstrates, to the satisfaction of the Commissioner, that the net interest owed would have been less than that provided in paragraph (h)(1)(ii) of this section if the elector had filed an amended return for the taxable year in which the recaptured dual consolidated loss was incurred, and for any other affected taxable years up to and including the taxable year of recapture, if no domestic use election had been made for the dual consolidated loss such that it had been subject to the restrictions of § 1.1503(d)–4(b) (and therefore subject to the limitations under § 1.1503(d)–4(c)). An elector using this rebuttal rule must prepare a computation demonstrating the reduction in the net interest owed as a result of treating the dual consolidated loss as a loss subject to the restrictions of § 1.1503(d)–4(b) (and therefore subject to the limitations under § 1.1503(d)–4(c)). The computation must be labeled ''Reduction of Interest Charge'' at the top of the page and must

indicate that it is submitted under the provisions of this paragraph (h)(2)(ii). The computation must be signed under penalties of perjury by the person who signs the elector's tax return, and must be attached to, and filed by the due date (including extensions) of, the elector's income tax return for the taxable year in which the triggering event occurs. See § 1.1503(d)–7(c) *Examples 39* and *40*.

(3) *Rules regarding multiple-party event exceptions to triggering events*—(i) *Scope.* The rules of this paragraph (h)(3) apply when, after a triggering event described in paragraph (e) of this section with respect to which the requirements of paragraph (f)(2)(i) of this section were met (excepted event), a triggering event under paragraph (e) of this section occurs, and no exception applies to such triggering event under paragraph (f) of this section (subsequent triggering event). See § 1.1503(d)–7(c) *Examples 36* and *37*.

(ii) *Original elector and prior subsequent electors not subject to recapture or interest charge*—(A) Except to the extent otherwise provided in this paragraph (h)(3), neither the original elector nor any prior subsequent elector shall be subject to the rules of this paragraph (h) with respect to dual consolidated losses subject to the original domestic use agreement.

(B) In the case of a dual consolidated loss with respect to which multiple excepted events have occurred, only the subsequent elector that owns the dual resident corporation or separate unit at the time of the subsequent triggering event shall be subject to the recapture rules of this paragraph (h). For purposes of this paragraph (h), the term prior subsequent elector refers to all other subsequent electors.

(iii) *Recapture tax amount and required statement*—(A) *In general.* If a subsequent triggering event occurs, the subsequent elector shall take into account the recapture tax amount as determined under paragraph (h)(3)(iii)(B) of this section. The subsequent elector must prepare a statement that computes the recapture tax amount, as provided under paragraph (h)(3)(iii)(B) of this section, with respect to the dual consolidated loss subject to the new domestic use agreement. This statement must be attached to, and filed by the due date (including extensions) of, the subsequent elector's income tax return for the taxable year in which the subsequent triggering event occurs (or, when the subsequent triggering event is a foreign use of the dual consolidated loss, the taxable year that includes the last day of the foreign taxable year during which such foreign use occurs). The statement must be signed under penalties of perjury by the person who signs the return. The statement must be labeled ''Statement Identifying Liability'' at the top and, in addition to the calculation of the recapture tax amount, must include the following items, in paragraphs labeled to correspond with the items set forth in paragraphs (h)(3)(iii)(A)(*1*) through (*3*) of this section:

(*1*) A statement that the document is submitted under the provisions of § 1.1503(d)–6(h)(3)(iii).

(*2*) A statement identifying the amount of the dual consolidated losses at issue and the taxable years in which they were used.

(*3*) The name, address, and taxpayer identification number of the original elector and all prior subsequent electors.

(B) *Recapture tax amount.* The recapture tax amount equals the excess (if any) of—

(*1*) The income tax liability of the subsequent elector for the taxable year that includes the amount of recapture and related interest charge with respect to the dual consolidated losses that are recaptured as a result of the subsequent triggering event, as provided under paragraphs (h)(1) and (h)(2) of this section; over

(*2*) The income tax liability of the subsequent elector for such taxable year, computed by excluding the amount of recapture and related interest charge described in paragraph (h)(3)(iii)(B)(*1*) of this section.

(iv) *Tax assessment and collection procedures*—(A) *In general*—(*1*) *Subsequent elector.* An assessment identifying an income tax liability of the subsequent elector is considered an assessment of the recapture tax amount where the recapture tax amount is part of the income tax liability being assessed and the recapture tax amount is reflected in a statement attached to the subsequent elector's income tax return as provided under paragraph (h)(3)(iii) of this section.

(*2*) *Original elector and prior subsequent electors.* The assessment of the recapture tax amount as set forth in paragraph (h)(3)(iv)(A)(*1*) of this section shall be considered as having been properly assessed as an income tax liability of the original elector and of each prior subsequent elector, if any. The date of such assessment shall be the date the income tax liability of the subsequent elector was properly assessed. The Commissioner may collect all or a portion of such recapture tax amount from the original elector and/or the prior subsequent electors under the circumstances set forth in paragraph (h)(3)(iv)(B) of this section.

(B) *Collection from original elector and prior subsequent electors; joint and several liability*—(*1*) *In general.* If the subsequent elector does not pay in full the income tax liability that includes a recapture tax amount, the Commissioner may collect that portion of the unpaid balance of such income tax liability attributable to the recapture tax amount in full or in part from the original elector and/or from any prior subsequent elector, provided that the following conditions are satisfied with respect to such elector:

(*i*) The Commissioner properly has assessed the recapture tax amount pursuant to paragraph (h)(3)(iv)(A)(*1*) of this section.

(*ii*) The Commissioner has issued a notice and demand for payment of the recapture tax amount to the subsequent elector in accordance with § 301.6303–1 of this chapter.

(*iii*) The subsequent elector has failed to pay all of the recapture tax amount by the date specified in such notice and demand.

(*iv*) The Commissioner has issued a notice and demand for payment of the unpaid portion of the recapture tax amount to the original elector, or prior subsequent elector (as the case may be), in accordance with § 301.6303–1 of this chapter.

(*2*) *Joint and several liability.* The liability imposed under this paragraph (h)(3)(iv)(B) on the original elector and each prior subsequent elector shall be joint and several.

(C) *Allocation of partial payments of tax.* If the subsequent elector's income tax liability for a taxable period includes a recapture tax amount, and if such income tax liability is satisfied in part by payment, credit, or offset, such payment, credit or offset shall be allocated first to that portion of the income tax liability that is not attributable to the recapture tax amount, and then to that portion of the income tax liability that is attributable to the recapture tax amount.

(D) *Refund.* If the Commissioner makes a refund of any income tax liability that includes a recapture tax amount, the Commissioner shall allocate and pay the refund to each elector who paid a portion of such income tax liability as follows:

(*1*) The Commissioner shall first determine the total amount of recapture tax paid by and/or collected from the original elector and from any prior subsequent electors. The Commissioner shall then allocate and pay such refund to the original elector and prior subsequent electors, with each such elector receiving an amount of such refund on a pro rata basis, not to exceed

the amount of recapture tax paid by and/or collected from such elector.

(*2*) The Commissioner shall pay the balance of such refund, if any, to the subsequent elector.

(v) *Definition of income tax liability.* Solely for purposes of paragraph (h)(3) of this section, the term *income tax liability* means the income tax liability imposed on a domestic corporation under Title 26 of the United States Code for a taxable year, including additions to tax, additional amounts, penalties, and any interest charge related to such income tax liability.

(vi) *Example.* See § 1.1503(d)–7(c) *Example 36*.

(4) *Computation of taxable income in year of recapture*—(i) *Presumptive rule*. Except to the extent provided in paragraph (h)(4)(ii) of this section, for purposes of computing the taxable income for the year of recapture, no current, carryover or carryback losses may offset and absorb the recapture amount.

(ii) *Exception to presumptive rule*. The recapture amount included in gross income may be offset and absorbed by that portion of the elector's net operating loss carryover that is attributable to the dual resident corporation or separate unit that incurred the dual consolidated loss being recaptured, if the elector demonstrates, to the satisfaction of the Commissioner, the amount of such portion of the carryover. The principles of § 1.1502–21(b)(2)(iv) shall apply for purposes of determining whether any portion of a net operating loss carryover is attributable to the dual resident corporation or separate unit. In the case of a separate unit, such determination shall be made by treating the separate unit as a domestic corporation and a member of the consolidated group composing its unaffiliated domestic owner, or members of the consolidated group of which its affiliated domestic owner is a member, as appropriate. An elector utilizing this rebuttal rule must prepare a computation demonstrating the amount of net operating loss carryover that, under this paragraph (h)(4)(ii), may absorb the recapture amount included in gross income. Such computation must be signed under penalties of perjury and attached to and filed by the due date (including extensions) of, the income tax return for the taxable year in which the triggering event occurs (or, when the triggering event is a foreign use of the dual consolidated loss, the taxable year that includes the last day of the foreign taxable year during which such foreign use occurs).

(5) *Character and source of recapture income.* The amount recaptured under this paragraph (h) shall be treated as ordinary income. Except as provided in the prior sentence, such income shall be treated, as applicable, as income from the same source, having the same character, and falling within the same separate category, for all purposes, including sections 904(d) and 907, to which the items of deduction or loss composing the dual consolidated loss were allocated and apportioned, as provided under sections 861(b), 862(b), 863(a), 864(e), 865, and the related regulations. For this determination, the pro rata computation of the items of deduction or loss composing the dual consolidated loss as described in § 1.1503(d)–4(c)(4) shall apply. See § 1.1503(d)–7(c) *Example 38*.

(6) *Reconstituted net operating loss*—(i) *General rule*. Except as provided in paragraphs (h)(6)(ii) and (iii) of this section, commencing in the taxable year immediately following the year in which the dual consolidated loss is recaptured, the dual resident corporation, or the domestic owner of the separate unit, that incurred the dual consolidated loss that is recaptured shall be treated as having a net operating loss (reconstituted net operating loss) in an amount equal to the amount actually recaptured under this paragraph (h). If a domestic corporation (transferee) acquires the assets of the dual resident corporation or domestic owner in a transaction described in section 381(a), the preceding sentence shall be applied by treating the transferee as the dual resident corporation or domestic owner, as applicable. In a case to which this paragraph (h)(6) applies, the transferee corporation shall be treated as having a reconstituted net operating loss in an amount equal to the amount actually recaptured under this paragraph (h). In no event, however, shall more than one corporation be treated as having a reconstituted net operating loss as a result of a single dual consolidated loss being recaptured. A reconstituted net operating loss of a domestic owner shall be attributable under § 1.1503(d)–5 to the separate unit that incurred the dual consolidated loss that was recaptured. Moreover, a reconstituted net operating loss shall be subject to the domestic use limitation of § 1.1503(d)–4(b) (and therefore subject to the limitation under § 1.1503(d)–4(c)), without regard to the exceptions contained in paragraphs (b) through (d) of this section (relating to elective agreements in place between the United States and a foreign country, the ability to demonstrate no possibility of a foreign use, and a domestic use election, respectively). The reconstituted net operating loss shall be available only for carryover, under section 172(b), to taxable years following the taxable year of recapture. For purposes of determining the remaining carryover period, the reconstituted net operating loss shall be treated as if it had been recognized in the taxable year in which the dual consolidated loss that is the basis of the recapture amount was incurred. See § 1.1503(d)–7(c) *Examples 36, 38,* and *40*.

(ii) *Exception.* Paragraph (h)(6)(i) of this section shall not apply to the extent the dual consolidated loss that is the basis of the recapture amount would have been eliminated pursuant to § 1.1503(d)–4(d) if no domestic use election had been made for such loss. See § 1.1503(d)–7(c) *Example 40.*

(iii) *Special rule for recapture following multiple-party event exception to a triggering event.* This paragraph applies to an excepted event described in paragraph (f)(2)(i)(B) of this section that is followed by a subsequent triggering event requiring recapture as described in paragraph (f)(6) of this section. In such a case, the domestic corporation that owns, directly or indirectly, the assets of the dual resident corporation, or the assets of or the interests in a separate unit, immediately following the excepted event shall be treated as if it incurred the dual consolidated loss that is recaptured for purposes of applying paragraph (h)(6)(i) of this section. See § 1.1503(d)–7(c) *Example 36.*

(i) [Reserved].

(j) *Termination of domestic use agreement and annual certifications*—(1) *Rebuttals, exceptions to triggering events, and recapture.* The domestic use agreement filed with respect to a dual consolidated loss shall terminate prior to the end of the certification period and have no further effect if—

(i) An elector is able to rebut the presumption of a triggering event pursuant to the general rule in paragraph (e)(2)(i) of this section;

(ii) An event described in paragraph (e)(1) of this section is not a triggering event as a result of the application of paragraphs (f)(2)(i) or (ii) (relating to events requiring a new domestic use agreement) of this section; this paragraph (j)(1)(ii) does not, however, apply to terminate the new domestic use agreement filed in connection with the event pursuant to paragraph (f)(2)(iii)(A) of this section. See also paragraph (h)(3)(iv) of this section regarding collection from the original elector and

prior subsequent electors in certain cases; or

(iii) A dual consolidated loss is recaptured pursuant to paragraph (h) of this section. See § 1.1503(d)–7(c) *Examples 32* through *34.*

(2) *Termination of ability for foreign use*—(i) *In general.* A domestic use agreement filed with respect to a dual consolidated loss shall terminate and have no further effect as of the end of a taxable year if the elector—

(A) Demonstrates, to the satisfaction of the Commissioner, that as of the end of such taxable year no foreign use (as defined in § 1.1503(d)-3) of the dual consolidated loss can occur in any other year by any means; and

(B) Prepares a statement described in paragraph (j)(2)(ii) of this section that is attached to, and filed by the due date (including extensions) of, its U.S. income tax return for such taxable year.

(ii) *Statement.* The statement described in this paragraph (j)(2)(ii) must be signed under penalties of perjury by the person who signs the return. The statement must be labeled ''Termination of Ability for Foreign Use'' at the top of the page and must include the following information, in paragraphs labeled to correspond with the following:

(A) A statement that the document is submitted under the provisions of paragraph (j)(2) of this section.

(B) The information required by paragraph (c)(2)(ii) of this section.

(C) A statement of the amount of the dual consolidated loss at issue and the year in which such dual consolidated loss was incurred.

(D) The information described in paragraph (c)(2)(iv) of this section that supports the conclusion that no foreign use can occur as provided in paragraph (j)(2)(i)(A) of this section.

(3) *Agreements filed in connection with stand-alone exception.* See § 1.1503(d)–3(e)(2)(iii) for the termination of domestic use agreements filed in connection with the stand-alone exception to the mirror legislation rule when a subsequent election is made under paragraph (b) of this section (relating to agreements entered into between the United States and a foreign country).

§ 1.1503(d)–7 Examples.

(a) *In general.* This section provides examples that illustrate the application of §§ 1.1503(d)–1 through 1.1503(d)–6. This section also provides facts that are presumed for such examples.

(b) *Presumed facts for examples.* For purposes of the examples in this section, unless otherwise indicated, the following facts are presumed:

(1) Each entity has only a single class of equity outstanding, all of which is held by a single owner.

(2) P, a domestic corporation and the common parent of the P consolidated group, owns S, a domestic corporation and a member of the P consolidated group.

(3) DRC_X, a domestic corporation, is subject to Country X tax on its worldwide income or on a residence basis, and is a dual resident corporation.

(4) $DE1_X$ and $DE2_X$ are both Country X entities, subject to Country X tax on their worldwide income or on a residence basis, and disregarded as entities separate from their owners for U.S. tax purposes. $DE3_Y$ is a Country Y entity, subject to Country Y tax on its worldwide income or on a residence basis, and disregarded as an entity separate from its owner for U.S. tax purposes. All the interests in $DE1_X$, $DE2_X$, and $DE3_Y$ constitute hybrid entity separate units.

(5) FB_X is a Country X business operation that, if carried on by a U.S. person, would constitute a foreign branch, as defined in § 1.367(a)–6T(g)(1), and is a Country X foreign branch separate unit.

(6) Neither the assets nor the activities of an entity constitute a foreign branch separate unit.

(7) FS_X is a Country X entity that is subject to Country X tax on its worldwide income or on a residence basis and is classified as a foreign corporation for U.S. tax purposes.

(8) The applicable foreign country has a consolidation regime that—

(i) Includes as members of a consolidated group any commonly controlled branches and permanent establishments in such jurisdiction, and entities that are subject to tax in such jurisdiction on their worldwide income or on a residence basis; and

(ii) Allows the losses of members of consolidated groups to offset income of other members.

(9) There is no mirror legislation, within the meaning of § 1.1503(d)–3(e)(1), in the applicable foreign country.

(10) There is no elective agreement described in § 1.1503(d)–6(b) between the United States and the applicable foreign country.

(11) There is no income tax convention between the United States and the applicable foreign country.

(12) If a domestic use election, within the meaning of § 1.1503(d)–6(d), is made, all the necessary filings related to such election are properly completed on a timely basis.

(13) If there is a triggering event requiring recapture of a dual consolidated loss, the amount of recapture is not reduced pursuant to § 1.1503(d)–6(h)(2).

(14) There are no other items of income, gain, deduction, and loss. In addition, the United States and the applicable foreign country recognize the same items of income, gain, deduction, and loss in each taxable year.

(15) All taxpayers use the calendar year as their taxable year.

(c) *Examples.* The following examples illustrate the application of §§ 1.1503(d)–1 through 1.1503(d)–6:

Example 1. Separate unit combination rule. (i) *Facts.* P owns $DE3_Y$ which, in turn, owns $DE1_X$. $DE1_X$ owns FB_X. PRS, an entity treated as a partnership for both U.S. and Country X tax purposes, is owned 50 percent by P and 50 percent by an unrelated foreign person. PRS carries on a business operation in Country X that, if carried on by a U.S. person, would constitute a foreign branch within the meaning of § 1.367(a)–6T(g)(1). In addition, P owns DRC_X, a member of the consolidated group of which P is the parent, which carries on business operations in Country X that constitute a foreign branch within the meaning of § 1.367(a)–6T(g)(1). S owns $DE2_X$.

(ii) *Result.* Pursuant to § 1.1503(d)–1(b)(4)(ii), the interest in $DE1_X$, the interest in $DE2_X$, FB_X, P's share of the Country X business operations carried on by PRS (which is owned by P indirectly through its interest in PRS), and DRC_X's Country X business operations are combined and treated as a single separate unit of the consolidated group of which P is the parent. This is the case regardless of whether the losses of each individual separate unit are made available to offset the income of the other individual separate units under Country X tax laws. Because DRC_X is a dual resident corporation, it is not combined and treated as part of this combined separate unit and, as a result, DRC_x's income or dual consolidated loss is not taken into account in determining the income or dual consolidated loss of the combined separate unit. In addition, P's interest in $DE3_Y$ is not combined and is another separate unit because it is subject to tax in Country Y, rather than Country X.

Example 2. Definition of a separate unit and application of domestic use limitation—foreign branch separate unit. (i) *Facts.* P carries on business operations in Country X that constitute a permanent establishment under the U.S.–Country X income tax convention. In year 1, a loss is attributable to P's Country X permanent establishment, as determined under § 1.1503(d)–5.

(ii) *Result.* Under §§ 1.1503(d)–1(b)(4)(i)(A) and 1.367(a)–6T(g)(1), P's Country X permanent establishment constitutes a foreign branch separate unit. Therefore, the year 1 loss attributable to the foreign branch separate unit constitutes a dual consolidated loss pursuant to § 1.1503(d)–1(b)(5)(ii). The dual consolidated loss rules apply to the dual consolidated loss even though there is no affiliate of the foreign branch separate unit in Country X, because it is still possible that all or a portion of the dual consolidated loss can

be put to a foreign use. For example, there may be a foreign use with respect to a Country X affiliate acquired in a year subsequent to the year in which the dual consolidated loss was incurred. See § 1.1503(d)–6(a)(2). Accordingly, unless an exception under § 1.1503(d)–6 applies (such as a domestic use election), the year 1 dual consolidated loss attributable to P's Country X permanent establishment is subject to the domestic use limitation rule of § 1.1503(d)–4(b). As a result, pursuant to § 1.1503(d)–4(c), the year 1 dual consolidated loss cannot offset income of P that is not attributable to its Country X foreign branch separate unit, nor can it offset income of any other domestic affiliate. The loss can, however, offset income of the Country X foreign branch separate unit, subject to the application of § 1.1503(d)–4(c). The result would be the same even if Country X did not have a consolidation regime that includes as members of consolidated groups Country X branches or permanent establishments of nonresident corporations. The dual consolidated loss rules apply even in the absence of a consolidation regime in the foreign country because it is possible that all or a portion of a dual consolidated loss can be put to a foreign use by other means, such as through a sale, merger, or similar transaction. See § 1.1503(d)–6(a)(2).

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 2,* except that P's Country X business operations constitute a foreign branch as defined in § 1.367(a)–6T(g)(1), but do not constitute a permanent establishment under the U.S.–Country X income tax convention. Although the activities carried on by P in Country X would otherwise constitute a foreign branch separate unit as described in § 1.1503(d)–1(b)(4)(i)(A), the exception under § 1.1503(d)–1(b)(4)(iii) applies because the activities do not constitute a permanent establishment under the U.S.–Country X income tax convention. Thus, the Country X business operations do not constitute a foreign branch separate unit, and the year 1 loss is not subject to the dual consolidated loss rules. If P instead carried on its Country X business operations through $DE1_X$, then the exception under § 1.1503(d)–1(b)(4)(iii) would not apply because P carries on the business operations through a hybrid entity and, as a result, the business operations would constitute a foreign branch separate unit. Thus, in such a case the year 1 loss would be subject to the dual consolidated loss rules.

Example 3. Domestic use limitation—foreign branch separate unit owned through a partnership. (i) *Facts.* P and S organize a partnership, PRS_X, under the laws of Country X. PRS_X is treated as a partnership for both U.S. and Country X tax purposes. PRS_X owns FB_X. PRS_X earns U.S. source income that is unconnected with its FB_X branch operations, and such income is not subject to tax by Country X. In addition, such U.S. source income is not attributable to FB_X under § 1.1503(d)–5.

(ii) *Result.* Under § 1.1503(d)–1(b)(4)(i)(A), P's and S's shares of FB_X owned indirectly through their interests in PRS_X are individual foreign branch separate units. Pursuant to § 1.1503(b)–1(b)(4)(ii), these individual separate units are combined and treated as a single separate unit of the consolidated group of which P is the parent. Unless an exception under § 1.1503(d)–6 applies, any dual consolidated loss attributable to FB_X cannot offset income of P or S (other than income attributable to FB_X, subject to the application of § 1.1503(d)–4(c)), including their distributive share of the U.S. source income earned through their interests in PRS_X, nor can it offset income of any other domestic affiliates.

Example 4. Definition of a separate unit and domestic use limitation—interest in hybrid entity partnership and indirectly owned foreign branch separate unit. (i) *Facts.* HPS_X is a Country X entity that is subject to Country X tax on its worldwide income. HPS_X is classified as a partnership for Federal tax purposes. P, S, and FS_X, are the sole partners of HPS_X. For U.S. tax purposes, P, S, and FS_X each has an equal interest in each item of HPS_X's profit or loss. HPS_X carries on operations in Country Y that, if carried on by a U.S. person, would constitute a foreign branch within the meaning of § 1.367(a)–6T(g)(1).

(ii) *Result.* Under § 1.1503(d)–1(b)(4)(i)(B), the partnership interests in HPS_X held by P and S are individual hybrid entity separate units. These individual separate units are combined into a single separate unit under § 1.1503(d)–1(b)(4)(ii). In addition, P's and S's share of the Country Y operations owned indirectly through their interests in HPS_X are individual foreign branch separate units under § 1.1503(d)–1(b)(4)(i)(B). These individual separate units are also combined into a single separate unit under § 1.1503(d)–1(b)(4)(ii). Unless an exception under § 1.1503(d)–6 applies, dual consolidated losses attributable to P's and S's combined interests in HPS_X can only be used to offset income attributable to their combined interests in HPS_X (other than income attributable to P's and S's combined interests in the Country Y foreign branch separate unit), subject to the application of § 1.1503(d)–4(c). Similarly, dual consolidated losses attributable to P's and S's combined interests in the Country Y operations of HPS_X can only be used to offset income attributable to their combined interests in such Country Y operations, subject to the application of § 1.1503(d)–4(c). Neither FS_X's interest in HPS_X, nor its share of the Country Y operations owned by HPS_X, is a separate unit because FS_X is not a domestic corporation.

Example 5. Foreign use—general rule and de minimis reduction exception. (i) *Facts.* P owns $DE1_X$. $DE1_X$ owns FS_X. In year 1, there is a $100x loss attributable to P's interest in $DE1_X$ that is a dual consolidated loss. Also in year 1, FS_X earns $200x of income. $DE1_X$ and FS_X file a Country X consolidated tax return. For Country X tax purposes, the year 1 $100x loss of $DE1_X$ is used to offset $100x of year 1 income generated by FS_X. Under Country X tax law, unused losses are carried forward and available to offset income in subsequent taxable years.

(ii) *Result.* The $100x loss attributable to P's interest in $DE1_X$ is available to, and in fact does, offset FS_X's income under the laws of Country X. In addition, under U.S. tax principles, such income is considered to be an item of FS_X, a foreign corporation. As a result, under § 1.1503(d)–3(a), there has been a foreign use of the year 1 dual consolidated loss attributable to P's interest in $DE1_X$. Therefore, P cannot make a domestic use election with respect to the loss as provided under § 1.1503(d)–6(d)(2), and such loss will be subject to the domestic use limitation rule of § 1.1503(d)–4(b). The result would be the same even if FS_X, under Country X tax law, had no income against which the dual consolidated loss of $DE1_X$ could be offset (unless FS_X's ability to use the loss under Country X tax law requires an election, and no such election is made).

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 5,* except that FS_X cannot use the loss of $DE1_X$ under Country X tax law without an election, and no such election is made. Pursuant to the exception in § 1.1503(d)–3(c)(2), there is no foreign use of the year 1 dual consolidated loss attributable to P's interest in $DE1_X$. In addition, P files a domestic use election with respect to the year 1 dual consolidated loss attributable to its interest in $DE1_X$ and, at the beginning of year 3, P sells its interest in $DE1_X$ to F, a Country Y entity that is a foreign corporation. The sale of the interest in $DE1_X$ to F results in a foreign use triggering event pursuant to § 1.1503(d)–6(e)(1)(i) because, immediately after the sale, the loss attributable to the interest in $DE1_X$ carries over under Country X law and, therefore, is available under U.S. tax principles to offset income of the owner of the interest in $DE1_X$ which, in the hands of F, is not a separate unit. It is also a foreign use because the loss is available under U.S. tax principles to offset the income of F, a foreign corporation. See § 1.1503(d)–3(a)(1). Finally, the transfer is a triggering event pursuant to § 1.1503(d)–6(e)(1)(iv) and (v).

(iv) *Alternative facts.* The facts are the same as in paragraph (iii), of this *Example 5,* except that P only sells 5 percent of its interest in $DE1_X$ to F. Pursuant to Rev. Rul. 99–5 (1999–1 CB 434), see § 601.601(d)(2)(ii)(*b*) of this chapter, the transaction is treated as if P sold 5 percent of its interest in each of $DE1_X$'s assets to F, and then immediately thereafter P and F transferred their interests in the assets of $DE1_X$ to a partnership in exchange for an ownership interest therein. The sale of the 5 percent interest in $DE1_X$ generally results in a foreign use triggering event because a portion of the dual consolidated loss carries over under Country X tax law and is available under U.S. tax principles to offset income of the owner of the interest in $DE1_X$, a hybrid entity, which in the hands of F is not a separate unit. It is also a foreign use because the loss is available under U.S. tax principles to offset the income of F, a foreign corporation. See § 1.1503(d)–3(a)(1). However, pursuant to the exception under § 1.1503(d)–3(c)(5) (relating to a de minimis reduction of an interest in a separate unit), such availability does not result in a foreign use. In addition, pursuant to § 1.1503(d)–6(f)(1) and (3), the deemed transfers pursuant to Rev. Rul. 1999–5 as a result of the sale are not treated as triggering events described in § 1.1503(d)–6(e)(1)(iv) or (v).

Example 6. Foreign use and indirect foreign use—foreign reverse hybrid structure and disregarded payments. (i) *Facts.* P owns $DE1_X$. $DE1_X$ owns 99 percent and S owns 1 percent of FRH_X, a Country X partnership that elected to be treated as a corporation for U.S. tax purposes. FRH_X conducts a trade or business in Country X. In year 1, $DE1_X$ incurs interest expense on a third-party loan, which constitutes a dual consolidated loss attributable to P's interest in $DE1_X$. In year 1, for Country X tax purposes, $DE1_X$ takes into account its distributive share of income generated by FRH_X and offsets such income with its interest expense.

(ii) *Result.* In year 1, the dual consolidated loss attributable to P's interest in $DE1_X$ is available to, and in fact does, offset income recognized in Country X and, under U.S. tax principles, the income is considered to be income of FRH_X, a foreign corporation. Accordingly, pursuant to § 1.1503(d)–3(a)(1), there is a foreign use of the dual consolidated loss. Therefore, P cannot make a domestic use election with respect to the year 1 dual consolidated loss attributable to its interest in $DE1_X$, as provided under § 1.1503(d)–6(d)(2), and such loss will be subject to the domestic use limitation rule of § 1.1503(d)–4(b).

(iii) *Alternative facts.* (A) The facts are the same as in paragraph (i) of this *Example 6,* except as follows. Instead of owning $DE1_X$, P owns $DE3_Y$ which, in turn, owns $DE1_X$. In addition, $DE3_Y$, rather than $DE1_X$, is the obligor on the third-party loan and therefore incurs the interest expense on such loan. Finally, $DE3_Y$ on-lends the loan proceeds from the third-party loan to $DE1_X$, and $DE1_X$ pays interest to $DE3_Y$ on such loan that is generally disregarded for U.S. tax purposes.

(B) Pursuant to § 1.1503(d)–5(c)(1)(ii), for purposes of calculating income or a dual consolidated loss, $DE3_Y$ and $DE1_X$ do not take into account interest income or interest expense, respectively, with respect to amounts paid on the disregarded loan from $DE3_Y$ to $DE1_X$. As a result, such items neither create a dual consolidated loss with respect to the interest in $DE1_X$, nor do they reduce (or eliminate) the dual consolidated loss attributable to the interest in $DE3_Y$. Thus, in year 1, there is a dual consolidated loss attributable to P's interest in $DE3_Y$, but not to P's indirect interest in $DE1_X$.

(C) In year 1, interest expense paid by $DE1_X$ to $DE3_Y$ on the disregarded loan is taken into account as a deduction in computing $DE1_X$'s taxable income for Country X tax purposes, but does not give rise to a corresponding item of income or gain for U.S. tax purposes (because it is generally disregarded). In addition, such interest has the effect of making an item of deduction or loss composing the dual consolidated loss attributable to P's interest in $DE3_Y$ available for a foreign use. This is the case because it may reduce or offset items of deduction or loss composing the dual consolidated loss for foreign tax purposes, and creates another deduction or loss that may reduce or offset income of $DE1_X$ for foreign tax purposes that, under U.S. tax principles, is treated as income of FRH_X, a foreign corporation. Moreover, because the disregarded item is incurred or taken into account as interest for foreign tax purposes, it is deemed to have been incurred or taken into account with a principal purpose of avoiding the provisions of section 1503(d). Accordingly, there is an indirect foreign use of the year 1 dual consolidated loss attributable to P's interest in $DE3_Y$, and P cannot make a domestic use election with respect to such loss as provided under § 1.1503(d)–6(d)(2). Thus, the loss will be subject to the domestic use limitation rule of § 1.1503(d)–4(b).

Example 7. Indirect foreign use—hybrid instrument. (i) *Facts.* P owns $DE1_X$ which, in turn, owns FS_X. $DE1_X$ borrows cash from an unrelated lender and transfers the cash to FS_X in exchange for an instrument (hybrid instrument). The hybrid instrument is treated as equity for U.S. tax purposes and debt for Country X tax purposes. Interest expense on the loan from the unrelated lender results in a dual consolidated loss being attributable to P's interest in $DE1_X$ in year 1. $DE1_X$ does not elect under Country X law to consolidate with FS_X. In year 1, FS_X distributes its stock as a payment on the hybrid instrument to $DE1_X$. For U.S. tax purposes, such payment is excluded from P's gross income under section 305. However, for Country X tax purposes, such payment is treated as interest and gives rise to a deduction taken into account in computing FS_X's Country X tax liability; the payment also gives rise to interest income to $DE1_X$ for Country X tax purposes.

(ii) *Result.* The payment on the hybrid instrument does not give rise to an item of income or gain for U.S. tax purposes and therefore does not reduce (or eliminate) the dual consolidated loss attributable to P's interest in $DE1_X$. In addition, such payment is taken into account as a deduction in computing FS_X's taxable income for Country X tax purposes. Moreover, such payment has the effect of making an item of deduction or loss composing the dual consolidated loss attributable to P's interest in $DE1_X$ available for a foreign use. This is the case because it may reduce or offset items of deduction or loss composing the dual consolidated loss for foreign tax purposes, and creates a deduction that reduces or offsets income of FS_X for foreign tax purposes that, under U.S. tax principles, is income of a foreign corporation. Further, because the item is incurred, or taken into account, using an instrument that is treated as equity for U.S. tax purposes and debt for foreign tax purposes, it is deemed to have been engaged in with the principal purpose of avoiding the provisions of section 1503(d). As a result, there has been an indirect foreign use of the year 1 dual consolidated loss, and P cannot make a domestic use election with respect to such loss, as provided under § 1.1503(d)–6(d)(2). Thus, the year 1 dual consolidated loss will be subject to the domestic use limitation rule of § 1.1503(d)–4(b).

Example 8. No indirect foreign use—transaction entered into in the ordinary course of business. (i) *Facts.* P owns $DE1_X$ and FB_Y. FB_Y is a foreign branch separate unit located in Country Y. $DE1_X$ owns FB_X and FS_X. P's interest in $DE1_X$ and FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). Under Country X tax laws, $DE1_X$ elects to consolidate with FS_X. FB_Y engages in the business of providing services and, in connection with its ordinary course of business, provides services to unrelated third parties and to $DE1_X$. As compensation for services, $DE1_X$ makes a payment to FB_Y. Under Country X tax law, the payment is deductible. However, the payment is generally disregarded for U.S. tax purposes and, pursuant to § 1.1503(d)–5(c)(1)(ii), is not taken into account in calculating the income or dual consolidated loss attributable to the Country X separate unit or FB_Y. In year 1, the Country X separate unit and FB_Y each has a dual consolidated loss. The dual consolidated loss attributable to the Country X separate unit is subject to the domestic use limitation under § 1.1503(d)–4(b) because $DE1_X$ and FS_X elect to consolidate and, as a result, the dual consolidated loss is put to a foreign use.

(ii) *Result.* The payment made by $DE1_X$ to FB_Y in connection with the performance of services is taken into account as a deduction in computing $DE1_X$'s taxable income for Country X tax purposes, but does not give rise to an item of income or gain for U.S. tax purposes. In addition, such payment has the effect of making an item of deduction or loss composing the dual consolidated loss attributable to FB_Y available for a foreign use. This is the case because it may reduce or offset items of deduction or loss composing the dual consolidated loss of FB_Y for foreign tax purposes, and creates another deduction that reduces or offsets income of FS_X for foreign tax purposes (because $DE1_X$ and FS_X elect to file a consolidated return) that, under U.S. tax principles, is income of a foreign corporation. However, the transaction between $DE1_X$ and FB_Y was entered into in the ordinary course of FB_Y's trade or business. As a result, if P can demonstrate to the satisfaction of the Commissioner that the transaction was not entered into with a principal purpose of avoiding the provisions of section 1503(d), FB_Y's year 1 dual consolidated loss will not be treated as having been made available for an indirect foreign use. In such a case, P would be entitled to make a domestic use election with respect to such loss.

Example 9. Foreign use—dual resident corporation with hybrid entity joint venture. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. DRC_X owns 80 percent of HPS_X, a Country X entity that is subject to Country X tax on its worldwide income. HPS_X is classified as a partnership for U.S. tax purposes. FS_X owns the remaining 20 percent of HPS_X. In year 1, DRC_X generates a $100x net operating loss (without regard to items attributable to DRC_X's interest in HPS_X). Also in year 1, HPS_X generates $100x of income, $80x of which is attributable to DRC_X's interest in HPS_X. DRC_X and HPS_X file a consolidated tax return for Country X tax purposes, and HPS_X offsets its $100x of income with the $100x loss generated by DRC_X.

(ii) *Result.* DRC_X and its interest in HPS_X are not combined because DRC_X is a dual resident corporation and the combination rule under § 1.1503(d)–1(b)(4)(ii) only applies to separate units. The $100x year 1 net operating loss incurred by DRC_X (without

regard to items attributable to DRC_X's interest in HPS_X) is a dual consolidated loss. In addition, HPS_X is a hybrid entity and DRC_X's interest in HPS_X is a hybrid entity separate unit; however, there is no dual consolidated loss attributable to such separate unit in year 1 (instead, there is $80x of income attributable to such separate unit). DRC_X's year 1 dual consolidated loss offsets $100x of income for Country X purposes, and $20x of such income is, under U.S. tax principles, income of FS_X, which owns an interest in HPS_X that is not a separate unit (in addition, FS_X is a foreign corporation). As a result, pursuant to § 1.1503(d)–3(a), there is a foreign use of the year 1 dual consolidated loss of DRC_X, and P cannot make a domestic use election with respect to such loss pursuant to § 1.1503(d)–6(d)(2). Therefore, such loss will be subject to the domestic use limitation rule of § 1.1503(d)–4(b). The result would be the same even if HPS_X, under Country X laws, had no income against which the dual consolidated loss could be offset (unless the ability to use the loss under Country X laws required an election, and no such election is made).

Example 10. Foreign use—foreign parent corporation. (i) *Facts.* F1 and F2, nonresident alien individuals, each owns 50 percent of FP_X, a Country X entity that is subject to Country X tax on its worldwide income. FP_X is classified as a foreign corporation for U.S. tax purposes. FP_X owns DRC_X. DRC_X is the parent of a consolidated group that includes as a member DS, a domestic corporation. In year 1, DRC_X incurs a dual consolidated loss of $100x and, for Country X tax purposes, FP_X generates $100x of income. In year 1, FP_X elects to consolidate with DRC_X for Country X tax purposes, and the $100x year 1 loss of DRC_X is used to offset the income of FP_X under the laws of Country X. For U.S. tax purposes, the items of FP_X do not constitute items of income in year 1.

(ii) *Result.* The year 1 dual consolidated loss of DRC_X offsets the income of FP_X under the laws of Country X. Pursuant to § 1.1503(d)–3(a), the offset constitutes a foreign use because the items constituting such income are considered under U.S. tax principles to be items of a foreign corporation. This is the case even though the United States does not recognize such items as income in year 1. Therefore, DRC_X cannot make a domestic use election with respect to its year 1 dual consolidated loss pursuant to § 1.1503(d)–6(d)(2). As a result, such loss will be subject to the domestic use limitation rule of § 1.1503(d)–4(b).

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 10,* except that FP_X is classified as a partnership for U.S. tax purposes. The result would be the same as in paragraph (ii) of this *Example 10,* because the offset of the income generated by FP_X is a foreign use pursuant to § 1.1503(d)–3(a). This is the case because the items constituting such income are considered under U.S. tax principles to be items of F1 and F2, the owners of interests in FP_X (a hybrid entity), that are not separate units. Moreover, the result would be the same if F1 and F2 owned their interests in FP_X indirectly through another partnership.

Example 11. No foreign use—absence of foreign loss allocation rules. (i) *Facts.* P owns $DE1_X$ and DRC_X. DRC_X is a member of the P consolidated group and owns FS_X. $DE1_X$ owns FB_X. P's interest in $DE1_X$ and P's indirect interest in FB_X are individual separate units that are combined into a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). In year 1, DRC_X incurs a $200x net operating loss and $200x of income is attributable to P's Country X separate unit. The $200x net operating loss incurred by DRC_X is a dual consolidated loss. FS_X also earns $200x of income in year 1. DRC_X, $DE1_X$, and FS_X file a Country X consolidated tax return. However, Country X has no applicable rules for determining which income is offset by DRC_X's year 1 $200x loss.

(ii) *Result.* Under § 1.1503(d)–3(c)(3), DRC_X's $200x loss shall be treated as having been made available to offset the $200x of income attributable to P's Country X separate unit. P's Country X separate unit is not, under U.S. tax principles, a foreign corporation, and there is no interest in $DE1_X$ (which is a hybrid entity) that is not a separate unit. As a result, DRC_X's loss being made available to offset the income attributable to P's Country X separate unit is not considered a foreign use of such loss. Therefore, P can make a domestic use election with respect to DRC_X's year 1 dual consolidated loss.

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 11,* except that in year 1 only $150x of income is attributable to P's Country X separate unit. Because only $150x of income is attributed to P's Country X separate unit, $50x of DRC_X's year 1 dual consolidated loss is treated as being made available to offset the income of FS_X, a foreign corporation, and therefore constitutes a foreign use. As a result, DRC_X cannot make a domestic use election with respect to its year 1 dual consolidated loss pursuant to § 1.1503(d)–6(d)(2), and such loss will be subject to the domestic use limitation rule of § 1.1503(d)–4(b).

Example 12. No foreign use—absence of foreign loss usage ordering rules. (i) *Facts.* (A) P owns DRC_X, a member of the P consolidated group. DRC_X owns FS_X. Under the Country X consolidation regime, a consolidated group may elect in any given year to use all or a portion of the losses of one consolidated group member to offset income of other consolidated group members. If no such election is made in a year in which losses are generated by a consolidated member, such losses carry forward and are available, at the election of the consolidated group, to offset income of consolidated group members in subsequent taxable years. Country X law does not provide ordering rules for determining when a loss from a particular taxable year is used because, under Country X law, losses never expire. In addition, Country X law does not provide ordering rules for determining when a particular type of loss (for example, capital or ordinary) is used.

(B) In year 1, DRC_X incurs a capital loss of $80x which, under § 1.1503(d)–5(b)(2), is not a dual consolidated loss. DRC_X also incurs a net operating loss of $80x in year 1 which is a dual consolidated loss. FS_X generates $60x of capital gain in year 1 which, for Country X purposes, can be offset by capital losses and net operating losses. Under the laws of Country X, DRC_X elects to use $60x of its total year 1 loss of $160x to offset the $60x of capital gain generated by FS_X in year 1; the remaining $100x of year 1 loss carries forward. In both year 2 and year 3, DRC_X incurs a net operating loss of $100x, while FS_X incurs no income or loss in years 2 and 3. DRC_X's $100x losses incurred in year 2 and year 3 are dual consolidated losses. Because DRC_X does not elect under the laws of Country X to use all or a portion of its year 2 or year 3 net operating losses of $100x to offset the income of other members of the Country X consolidated group, P is permitted to make (and in fact does make) a domestic use election with respect to both the year 2 and year 3 dual consolidated losses of DRC_X. In year 4, DRC_X has a net operating loss of $10x and FS_X generates $125x of income. Country X law permits, upon an election, FS_X's $125x of income generated in year 4 to be offset by losses (including carryover losses from prior years) of other group members. Accordingly, in year 4, DRC_X elects to use $125x of its accumulated losses to offset the $125x of year 4 income generated by FS_X.

(ii) *Result.* (A) Under the ordering rules of § 1.1503(d)–3(d)(3), a pro rata amount of DRC_X's year 1 net operating loss ($30x) and capital loss ($30x) is considered to be used to offset FS_X's year 1 $60x capital gain. As a result, P cannot make a domestic use election with respect to DRC_X's year 1 $80x dual consolidated loss because a portion of such loss is put to a foreign use.

(B) DRC_X's $10x year 4 net operating loss is also a dual consolidated loss. Under the ordering rules of § 1.1503(d)–3(d)(1), such loss is considered to be used to offset $10x of FS_X's year 4 $125x of income. Consequently, P cannot make a domestic use election with respect to such loss. Under the ordering rules of § 1.1503(d)–3(d)(2), $50x of capital loss carryover and $50x of ordinary loss from year 1 will be considered to offset $100x of FS_X's year 4 income because the income is first deemed to have been offset by losses the use of which would not constitute a triggering event that would result in the recapture of a dual consolidated loss. The remaining $15x of FS_X's year 4 income is considered to be offset by losses from year 3 because it is the most recent taxable year from which a loss may be carried forward. Thus, a portion of the year 3 dual consolidated loss has been put to a foreign use and the entire year 3 dual consolidated loss is recaptured. However, none of DRC_X's $100x year 2 net operating loss will be deemed to offset FS_X's year 4 income. As a result, DRC_X's year 2 dual consolidated loss will not be recaptured.

Example 13. Exception to foreign use through partnership interest. (i) *Facts.* (A) P owns 80 percent of HPS_X, a Country X entity subject to Country X tax on its worldwide income. FS_Z, an unrelated foreign corporation, owns the remaining 20 percent of HPS_X. HPS_X is classified as a partnership for Federal tax purposes and carries on operations in Country X that, if carried on by a U.S. person, would constitute a foreign branch within the meaning of § 1.367(a)–

6T(g)(1). P's interest in HPS_X and P's indirect interest in the Country X branch are individual separate units that are combined into a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii).

(B) In year 1, HPS_X incurs a loss of $100x, $80x of which is attributable to P's Country X separate unit. The $80x of loss attributable to P's Country X separate unit constitutes a dual consolidated loss and P makes a domestic use election with respect to such loss. In year 2, HPS_X generates $50x of income, $40x of which is attributable to P's interest in the Country X separate unit. Under Country X income tax laws, the $100x of year 1 loss incurred by HPS_X is carried forward and offsets the $50x of income generated by HPS_X in year 2; the remaining $50x of loss is carried forward and is available to offset income generated by HPS_X in subsequent years. P and FS_Z maintain their ownership interests in HPS_X throughout years 1 and 2.

(ii) *Result.* In year 2, under the laws of Country X, the $100x of year 1 loss, which includes the $80x dual consolidated loss attributable to P's Country X separate unit, is made available to offset income of HPS_X. Such income is attributable to P's interest in HPS_X, which is a separate unit. Such income also is income of FS_Z, a foreign corporation that is an owner of an interest in HPS_X, which is not a separate unit. However, pursuant to § 1.1503(d)–3(c)(4), there is no foreign use of the year 1 dual consolidated loss in year 2. This is the case because P's interest in HPS_X as of the end of year 1 has not been reduced by more than a de minimis amount, and the portion of the $80x dual consolidated loss was made available for a foreign use in year 2 solely as a result of FS_Z's ownership in HPS_X and the allocation or carry forward of the dual consolidated loss as a result of such ownership.

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 13,* except that P also owns FS_X. In addition, FS_X and HPS_X elect to file a consolidated return under Country X law. The exception to foreign use under § 1.1503(d)–3(c)(4) does not apply because there is a foreign use other than by reason of the dual consolidated loss being made available as a result of FS_Z's ownership in HPS_X and the allocation or carry forward of the dual consolidated loss as a result of such ownership. That is, the exception does not apply because there is also a foreign use of the dual consolidated loss as a result of FS_X and HPS_X filing a consolidated return under Country X law.

(iv) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 13,* except that at the end of year 2, FS_Z contributes cash to HPS_X in exchange for additional equity of HPS_X. As a result of the contribution, FS_Z's interest in HPS_X increases from 20 percent to 30 percent, and P's interest in HPS_X decreases from 80 percent to 70 percent. P's interest in HPS_X is reduced within a single 12-month period by 12.5 percent (10/80), as compared to P's interest in HPS_X as of the beginning of such 12-month period. Accordingly, pursuant to § 1.1503(d)–3(c)(4)(iii), the exception to foreign use provided under § 1.1503(d)–3(c)(4)(i) does not apply. Therefore, in year 2 there is a foreign use of the $80x year 1 dual consolidated loss attributable to P's Country X separate unit. Such foreign use constitutes a triggering event in year 2 and the $80x year 1 dual consolidated loss is recaptured. Alternatively, if FS_Z were a domestic corporation, there would not be a foreign use of the $80x year 1 dual consolidated loss because the loss would not be available to offset income that, under U.S. tax principles, is income of a foreign corporation or a direct or indirect owner of an interest in a hybrid entity that is not a separate unit.

Example 14. Exception to foreign use through partnership interest—combination rule. (i) *Facts.* (A) P and FS_X form PRS_X. P and FS_X each own 50 percent of PRS_X throughout years 1 and 2. PRS_X is treated as a partnership for both U.S. and Country X tax purposes. PRS_X owns DE_Y. DE_Y is a Country Y entity subject to Country Y tax on its worldwide income and disregarded as an entity separate from its owner for U.S. tax purposes. DE_Y conducts business operations in Country Y that, if carried on by a U.S. person, would constitute a foreign branch as defined in § 1.367(a)–6T(g)(1). P's interest in the Country Y operations conducted by DE_Y is an individual foreign branch separate unit. P's interest in DE_Y, owned indirectly through PRS_X, is a hybrid entity individual separate unit. P also owns FB_Y, a Country Y foreign branch individual separate unit. Under § 1.1503(d)–1(b)(4)(ii), FB_Y and P's indirect interests in DE_Y and DE_Y's Country Y business operations are treated as a combined separate unit (Country Y separate unit).

(B) In year 1, there is a $100x loss attributable to the Country Y business operations conducted by DE_Y. Thus, there is a $50x loss attributable to P's interest in DE_Y's Country Y business operations in year 1. Also in year 1, there is a $200x loss attributable to FB_Y. No income or loss is attributable to P's interest in DE_Y in year 1. Under § 1.1503(d)–5(c)(4)(ii), the dual consolidated loss attributable to P's combined Country Y separate unit is $250x ($50x loss attributable to P's indirect interest in DE_Y's Country Y operations, plus $200x loss attributable to FB_Y). In year 2, neither DE_Y nor DE_Y's Country Y operations generates income or loss. Under Country Y law, the $100x of year 1 loss incurred by DE_Y is carried forward and is available to offset income of DE_Y in year 2.

(ii) *Result.* As a result of the carryover of the year 1 $100x loss (which includes $50x of the year 1 dual consolidated loss) under Country Y law, a portion of such loss will be available to offset income of DE_Y that is attributable to P's interest in DE_Y owned indirectly through PRS_X. A portion of such loss will also be available to offset income of DE_Y that is attributable to FS_X's indirect ownership of DE_Y. Accordingly, under § 1.1503(d)–3(a), there would be a foreign use of a portion of P's $250x year 1 dual consolidated loss because it is available to offset an item of income of the owner of an interest in a hybrid entity, which is not a separate unit (there would also be a foreign use in this case because FS_X is a foreign corporation). However, there has not been a reduction of P's interest in DE_Y, DE_Y has not consolidated under the laws of Country Y, and there has not been any other foreign use of the dual consolidated losses. As a result, no foreign use occurs as a result of the carryforward pursuant to § 1.1503(d)–3(c)(4)(i) and (ii).

Example 15. No foreign use—asset basis carryover exception. (i) *Facts.* P owns FB_X and FS_X. In year 1, there is a dual consolidated loss attributable to FB_X. P's items of income, gain, deduction, and loss that are taken into account in calculating FB_X's dual consolidated loss include depreciation deductions attributable to FB_X's assets. P makes a domestic use election under § 1.1503(d)–6(d) with respect to the year 1 dual consolidated loss of FB_X. At the end of year 2, P contributes a portion of FB_X's assets to FS_X, in exchange for stock in FS_X. The aggregate adjusted basis of the assets transferred by P to FS_X is less than 10 percent of the aggregate adjusted basis of all of FB_X's assets held at the beginning of year 2. In addition, no other assets of FB_X are transferred during the certification period. Under Country X law, FS_X's basis in the transferred assets is determined by reference to P's basis in such assets. In addition, under Country X law, a portion of the depreciation deductions that were taken into account in year 1 for U.S. tax purposes, are taken into account in year 2 for Country X tax purposes.

(ii) *Result.* As a result of the transfer of assets from P to FS_X, a portion of the year 1 dual consolidated loss is available for a foreign use. This is the case because a portion of the basis in FB_X's assets, which gave rise to depreciation deductions that were taken into account in computing the year 1 dual consolidated loss, will give rise to a depreciation deduction under Country X laws that will be available, under U.S. tax principles, to offset the income of FS_X, a foreign corporation, in year 2. However, the aggregate adjusted basis of all the assets transferred by P to FS_X, within the 12-month period ending at the end of year 2, is less than 10 percent of the aggregate adjusted basis of all of FB_X's assets at the beginning of such 12-month period. Moreover, the aggregate adjusted basis of the assets transferred by P to FS_X at any time during the certification period is less than 30 percent of the aggregate adjusted basis of FB_X's assets held at the end of year 1. In addition, the item of deduction giving rise to the foreign use is being made available solely as a result of the adjusted basis of the transferred assets being determined in whole, or in part, by reference to the adjusted basis of such transferred assets in the hands of FB_X. As a result, this transfer will not result in a foreign use pursuant to § 1.1503(d)–3(c)(6).

Example 16. No foreign use—liability assumption exception. (i) *Facts.* P owns FB_X. In year 1, there is a dual consolidated loss attributable to FB_X for which P makes a domestic use election under § 1.1503(d)–6(d). The dual consolidated loss includes a deduction for salary expense that was deductible for U.S. tax purposes at the end of year 1, even though it was not paid until year 2. The deduction was incurred in the ordinary course of FB_X's trade or business. During year 2, and before the accrued salary

expense liability was paid, P sells all the assets of FB_X to FS_X in exchange for cash and FS_X's assumption of the liabilities of the FB_X trade or business, including the obligation to pay the accrued salary expense. Under Country X law, the accrued salary expense of FB_X is deductible, and is taken into account for purposes of computing the taxable income of FB_X, when paid. FB_X pays the accrued salary expense after the sale of FB_X to FS_X.

(ii) *Result.* (A) As a result of FS_X's assumption of the FB_X liabilities, including the accrued salary expense, a portion of the dual consolidated loss is available for a foreign use in year 2. This is the case because the deduction that was taken into account in year 1 in computing the dual consolidated loss under U.S. tax principles will, under Country X tax law, be taken into account and will be available to offset the income of FS_X, a foreign corporation, in year 2. However, because this item of expense is made available solely as a result of the assumption of a liability of FB_X, and such liability was incurred in the ordinary course of FB_X's trade or business, there will not be a foreign use of the year 1 dual consolidated loss pursuant to § 1.1503(d)–3(c)(7).

(B) The transfer of all the assets of FB_X to FS_X is a triggering event under § 1.1503(d)–6(e)(1)(iv), unless P can rebut the triggering event under § 1.1503(d)–6(e)(2). For purposes of determining whether, under § 1.1503(d)–6(e)(2)(ii), the transfer of assets resulted in a carryover under foreign law of FB_X's losses, expenses, or deductions, the exception to foreign use for the assumption of liabilities is taken into account. However, the other exceptions to foreign use do not apply for this purpose (or for purposes of demonstrating that no foreign use of a dual consolidated loss can occur in any other year under § 1.1503(d)–6(c), (e)(2)(i) or (j)(2)). See § 1.1503(d)–3(c)(1). Provided the other requirements of § 1.1503(d)–6(e)(2)(ii) and (iii) are satisfied, P may be able to rebut the occurrence of a triggering event upon the transfer of FB_X's assets to FS_X.

Example 17. Mirror legislation rule—dual resident corporation and hybrid entity separate unit. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. DRC_X owns FS_X. In year 1, DRC_X incurs a $100x net operating loss that is a dual consolidated loss. To prevent corporations like DRC_X from offsetting losses both against income of affiliates in Country X and against income of foreign affiliates under the tax laws of another country, Country X mirror legislation prevents a corporation that is subject to the income tax of another country on its worldwide income or on a residence basis from using the Country X form of consolidation. Accordingly, the Country X mirror legislation prevents the loss of DRC_X from being made available to offset income of FS_X.

(ii) *Result.* Under § 1.1503(d)–3(e), because the losses of DRC_X are subject to Country X's mirror legislation, there is a deemed foreign use of DRC_X's year 1 dual consolidated loss. The stand-alone exception to the mirror rule in § 1.1503(d)–3(e)(2) does not apply because, absent the mirror legislation, DRC_X's year 1 dual consolidated loss would be available for a foreign use (as defined in § 1.1503(d)–3), without regard to whether such availability is limited by election or similar procedure. That is, absent the mirror legislation, all or a portion of the dual consolidated loss would be available to offset the income of FS_X under the Country X consolidation regime. This is the case even if Country X did not recognize DRC_X as having a loss in year 1. Therefore, P may not make a domestic use election with respect to DRC_X's year 1 dual consolidated loss pursuant to § 1.1503(d)–3(d)(2).

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 17*, except that P owns $DE1_X$ (rather than DRC_X) and, in year 1, there is a $100 dual consolidated loss attributable to P's interest in $DE1_X$ (rather than of DRC_X). The Country X mirror legislation only applies to Country X dual resident corporations and, therefore, does not apply to losses attributable to P's interest in $DE1_X$. As a result, the mirror legislation rule under § 1.1503(d)–3(e) would not deny the opportunity of such loss from being put to a foreign use (for example, by offsetting the income of FS_X through the Country X consolidation regime). Therefore, a domestic use election can be made with respect to the dual consolidated loss (provided the conditions for such an election are otherwise satisfied).

Example 18. Mirror legislation rule—standalone foreign branch separate unit. (i) *Facts.* P owns FB_X. In year 1, there is a $100x dual consolidated loss attributable to FB_X. Country X enacted mirror legislation to prevent Country X branches and permanent establishments of nonresident corporations from offsetting losses both against income of Country X affiliates and against other income of its owner (or foreign affiliates thereof) under the tax laws of another country. The Country X mirror legislation prevents a Country X branch or permanent establishment of a nonresident corporation from offsetting its losses against the income of Country X affiliates if such losses may be deductible against income (other than income of the Country X branch or permanent establishment) under the laws of another country.

(ii) *Result.* In general, under § 1.1503(d)–3(e), because the losses of FB_X are subject to Country X's mirror legislation, there is a deemed foreign use of FB_X's year 1 dual consolidated loss. However, in the absence of the Country X mirror legislation, no item of deduction or loss composing FB_X's year 1 dual consolidated loss would be available in the year incurred for a foreign use (as defined in § 1.1503(d)–3), without regard to whether such availability is limited by election or otherwise. This is the case because there is no Country X entity through which the dual consolidated loss could be put to a foreign use (absent a sale, merger, or similar transaction involving FB_X). As a result, the stand-alone exception in § 1.1503(d)–3(e)(2) may apply, provided P complies with the requirements of § 1.1503(d)–3(e)(2)(ii). Accordingly, P may make a domestic use election with respect to the year 1 dual consolidated loss of FB_X pursuant to § 1.1503(d)–6(d). If, however, any item of the dual consolidated loss would otherwise be available for a foreign use during the certification period (for example, as a result of P acquiring a foreign corporation that is organized under the laws of Country X such that losses of FB_X could be put to a foreign use through consolidation or similar means), then such loss would be recaptured pursuant to § 1.1503(d)–6(e)(1)(ix).

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 18*, except that the Country X mirror legislation operates in a manner similar to the rules under section 1503(d). That is, it allows the taxpayer to elect to use the loss to either offset income of an affiliate in Country X, or income of an affiliate (or other income of the owner of the Country X branch or permanent establishment) in the other country, but not both. Because the Country X mirror legislation permits the taxpayer to choose to put the dual consolidated loss to a foreign use, it does not deny the opportunity to put the loss to a foreign use. Therefore, there is no deemed foreign use of the dual consolidated loss pursuant to § 1.1503(d)–4(e) and a domestic use election can be made for such loss.

Example 19. Application of mirror legislation rule to combined separate unit. (i) *Facts.* P owns FB_X, FS_X, and $DE1_X$. In year 1, there is a $50x dual consolidated loss attributable to FB_X and $10x of income attributable to P's interest in $DE1_X$. FS_X has income of $100x. Pursuant to § 1.1503(d)–1(b)(4)(ii), FB_X and P's interest in $DE1_X$ are combined and treated as a single separate unit (Country X separate unit) which has a year 1 dual consolidated loss of $40x. Country X enacted mirror legislation to prevent Country X branches or permanent establishments of nonresident corporations from offsetting losses both against income of Country X affiliates and against other income of its owner (or foreign affiliates thereof) under the tax laws of another country. The Country X mirror legislation prevents a Country X branch or permanent establishment of a nonresident corporation from offsetting its losses against the income of Country X affiliates if such losses may be deductible against income (other than income of the Country X branch or permanent establishment) under the laws of another country. However, the United States and Country X have entered into an agreement described in § 1.1503(d)–6(b) pursuant to the U.S.-Country X income tax convention (mirror agreement). The mirror agreement applies to Country X foreign branch separate units of domestic corporations, but not to Country X hybrid entity separate units. The mirror agreement provides that neither the Country X mirror legislation nor the mirror legislation rule under § 1.1503(d)–3(e) will apply to losses attributable to Country X foreign branch separate units, provided certain conditions and reporting requirements are satisfied (including a domestic use election, if the loss is to be used to offset income of a domestic affiliate). Thus, losses attributable to Country X foreign branch separate units can, subject to the requirements of the mirror agreement, be used to offset income of a domestic affiliate or a Country X affiliate (but not both).

(ii) *Result.* The Country X mirror legislation only applies to Country X foreign

branch separate units and does not apply to hybrid entity separate units. In addition, if P complies with the terms and conditions of the mirror agreement, the Country X mirror legislation would not apply to FB_X. As a result, the income tax laws of Country X would not deny the opportunity of a loss of either individual separate unit that composes P's combined Country X separate unit from being put to a foreign use. Therefore, notwithstanding § 1.1503(d)–3(e), a domestic use election can be made with respect to the dual consolidated loss attributable to P's Country X separate unit, provided the terms and conditions of the mirror agreement are satisfied. See § 1.1503(d)–6(b)(2).

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 19*, except that the Country X mirror legislation also applies to losses attributable to $DE1_X$, but the mirror agreement does not apply to such losses. The mirror legislation rule would apply with respect to P's interest in $DE1_X$ and, as a result, there is a deemed foreign use of the dual consolidated loss attributable to the Country X separate unit and a domestic use election cannot be made for such loss. This is the case even though, pursuant to § 1.1503(d)–5(c)(4)(ii)(A), P's interest in $DE1_X$ (which is subject to the Country X mirror legislation) does not, as an individual separate unit, have a dual consolidated loss in year 1. Further, the stand-alone exception to the mirror legislation rule in § 1.1503(d)–3(e)(2) does not apply because, absent the mirror legislation, the Country X combined separate unit's dual consolidated loss would be available in the year incurred for a foreign use (as defined in § 1.1503(d)–3) because it could be used to offset income of FS_X under the Country X consolidation regime. This is the case even if Country X requires an election to consolidate and no such election is made. The result would be the same even if Country X did not recognize $DE1_X$ as having a loss.

Example 20. Dual consolidated loss limitation after section 381 transaction—disposition of assets and subsequent liquidation of dual resident corporation. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. In year 1, DRC_X incurs a dual consolidated loss and P does not make a domestic use election with respect to such loss. Under § 1.1503(d)–4(b), DRC_X's year 1 dual consolidated loss is subject to the limitations under § 1.1503(d)–4(c) and, therefore, may not be used to offset the income of P or S (or any other domestic affiliate) on the group's U.S. income tax return. At the beginning of year 2, DRC_X sells all of its assets for cash and distributes the cash to P pursuant to a liquidation that qualifies under section 332.

(ii) *Result.* In general, under section 381, P would succeed to, and be permitted to use, DRC_X's net operating loss carryover. However, § 1.1503(d)–4(d)(1)(i) prohibits the dual consolidated loss of DRC_X from carrying over to P. Therefore, DRC_X's year 1 net operating loss carryover is eliminated.

Example 21. Dual consolidated loss limitation applied to a separate unit transferred in a section 381 transaction. (i) *Facts.* S owns $DE1_X$ which, in turn, owns FB_X. S's interest in $DE1_X$ and its indirect interest in FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). In year 1, a dual consolidated loss is attributable to the Country X separate unit, and P does not make a domestic use election with respect to such loss. Under § 1.1503(d)–4(b), the year 1 dual consolidated loss attributable to the Country X separate unit may not be used to offset the income of P or S (other than income attributable to the Country X separate unit, subject to the application of § 1.1503(d)–4(c)) on the group's consolidated U.S. income tax return (nor may it be used to offset the income of any other domestic affiliates). At the beginning of year 2, S transfers its entire interest in $DE1_X$, and thus its entire indirect interest in FB_X, to FS_X in a transaction described in section 381.

(ii) *Result.* Section 1.1503(d)–4(d)(1)(ii) provides that the dual consolidated loss attributable to a separate unit that is subject to the domestic use limitation under § 1.1503(d)–4(b) is eliminated if the separate unit ceases to be a separate unit of its affiliated domestic owner and all other members of the affiliated domestic owner's separate group. As a result of the transfer of the Country X separate unit to FS_X, the Country X separate unit ceases to be a separate unit of S, and is not a separate unit of any other member of the P consolidated group. In addition, the exceptions in § 1.1503(d)–4(d)(2)(iii) do not apply because FS_X is not a domestic corporation. Thus, the year 1 dual consolidated loss attributable to the Country X separate unit is eliminated.

(iii) *Alternative facts.* Assume the same facts as in paragraph (i) of this *Example 21*, except S transfers its assets to DC, a domestic corporation that is not a member of the P consolidated group, in a transaction described in section 381(a). Immediately after the transaction, the Country X separate unit is a separate unit of DC. Under § 1.1503(d)–4(d)(1)(ii), the year 1 dual consolidated loss of the Country X separate unit would be eliminated because it ceases to be a separate unit of S, and is not a separate unit of any other member of the P consolidated group. However, because the transferee is a domestic corporation and the Country X separate unit is a separate unit in the hands of DC immediately after the transaction, the exception under § 1.1503(d)–4(d)(2)(iii)(A) applies. As a result, the year 1 dual consolidated loss of the Country X separate unit is not eliminated and any income generated by DC that is attributable to the Country X separate unit following the transfer may be offset by the carryover dual consolidated losses attributable to the Country X separate unit, subject to the limitations of § 1.1503(d)–4(b) and (c) applied as if DC generated the dual consolidated loss and such loss was attributable to the Country X separate unit.

(iv) *Alternative facts.* Assume the same facts as in paragraph (iii) of this *Example 21*, except that P owns $DE2_X$ and the interest in $DE2_X$ is combined with and therefore included in the Country X separate unit. In addition, a portion of the dual consolidated loss of the Country X separate unit is attributable to P's interest in $DE2_X$. Pursuant to § 1.1503(d)–4(d)(2)(iii)(A), the result would be the same as in paragraph (iii) of this *Example 21*, with respect to the portion of the dual consolidated loss attributable to the combined separate unit that is succeeded to and taken into account by DC pursuant to section 381. The portion of the dual consolidated loss attributable to P's interest in $DE2_X$, however, does not carry over to DC but is retained by P and continues to be subject to the limitations of § 1.1503(d)–4(b) and (c) with respect to P's interest in $DE2_X$.

(v) *Alternative facts.* Assume the same facts as in paragraph (iv) of this *Example 21*, except that DC is a member of the P consolidated group. Pursuant to § 1.1503(d)–4(d)(2)(iii)(B), the dual consolidated loss of the Country X separate unit is not eliminated and income attributable to the Country X separate unit may continue to be offset by the dual consolidated loss that is succeeded to and taken into account by DC pursuant to section 381, subject to the limitations of § 1.1503(d)–4(b) and (c). The result would be the same even if the interest in $DE1_X$ ceased to be a separate unit in the hands of DC (for example, because it dissolved under Country X law in connection with the transaction), provided P, or another member of the P consolidated group, continued to own a portion of the Country X separate unit.

Example 22. Tainted income. (i) *Facts.* P owns 100 percent of DRC_Z, a domestic corporation that is included as a member of the P consolidated group. DRC_Z conducts a business in the United States. During year 1, DRC_Z was managed and controlled in Country Z and therefore was subject to tax as a resident of Country Z and was a dual resident corporation. In year 1, DRC_Z incurred a dual consolidated loss of $200x, and P did not make a domestic use election with respect to such loss. As a result, such loss is subject to the domestic use limitation rule of § 1.1503(d)–4(b). At the end of year 1, DRC_Z moved its management and control to the United States and, as a result, ceased being a dual resident corporation. At the beginning of year 2, P transferred asset A, a non-depreciable asset, to DRC_Z in exchange for common stock in a transaction that qualified for nonrecognition under section 351. At the time of the transfer, P's tax basis in asset A equaled $50x and the fair market value of asset A equaled $100x. The tax basis of asset A in the hands of DRC_Z immediately after the transfer equaled $50x pursuant to section 362. Asset A did not constitute replacement property acquired in the ordinary course of business. DRC_Z did not generate income or gain during years 2, 3, or 4. On June 30, year 5, DRC_Z sold asset A to a third party for $100x, its fair market value at the time of the sale, and recognized $50x of income on such sale. In addition to the $50x income generated on the sale of asset A, DRC_Z generated $100x of operating income in year 5. At the end of year 5, the fair market value of all the assets of DRC_Z was $400x.

(ii) *Result.* DRC_Z ceased being a dual resident corporation at the end of year 1. Therefore, its year 1 dual consolidated loss cannot be offset by tainted income. Asset A is a tainted asset because it was acquired in a nonrecognition transaction after DRC_Z

ceased being a dual resident corporation (and was not replacement property acquired in the ordinary course of business). As a result, the \$50x of income recognized by DRC_Z on the disposition of asset A is tainted income and cannot be offset by the year 1 dual consolidated loss of DRC_Z. In addition, absent evidence establishing the actual amount of tainted income, \$25x of the \$100x year 5 operating income of DRC_Z ((\$100x/\$400x) × \$100x) also is treated as tainted income and cannot be offset by the year 1 dual consolidated loss of DRC_Z under § 1.1503(d)–4(e)(2)(ii). Therefore, \$75x of the \$150x year 5 income of DRC_Z constitutes tainted income and may not be offset by the year 1 dual consolidated loss of DRC_Z; however, the remaining \$75x of year 5 income of DRC_Z may be offset by such dual consolidated loss. The result would be the same if, instead of P transferring asset A to DRC_Z, such asset was received from a separate unit or a transparent entity of DRC_Z.

Example 23. Treatment of disregarded item and books and records of a hybrid entity. (i) *Facts.* P owns $DE1_X$ which, in turn, owns FS_X. In year 1, P borrows from a third party and on-lends the proceeds to $DE1_X$. In year 1, P incurs interest expense attributable to the third-party loan. Also in year 1, $DE1_X$ incurs interest expense attributable to its loan from P, but such expense is generally disregarded for U.S. tax purposes because $DE1_X$ is disregarded as an entity separate from P. The third-party loan and related interest expense are reflected on the books and records of P (and not on the books and records of $DE1_X$). The loan from P to $DE1_X$ and related interest expense are reflected on the books and records of $DE1_X$. There are no other items of income, gain, deduction, or loss reflected on the books and records of $DE1_X$ in year 1.

(ii) *Result.* Because the interest expense on P's third-party loan is not reflected on the books and records of $DE1_X$, no portion of such expense is attributable to P's interest in $DE1_X$ pursuant to § 1.1503(d)–5(c)(3) for purposes of calculating the year 1 dual consolidated loss, if any, attributable to such interest. In addition, even though P's interest in $DE1_X$ is treated as a separate domestic corporation for purposes of determining the amount of income or dual consolidated loss attributable to it pursuant to § 1.1503(d)–5(c)(1)(ii), such treatment does not cause the interest expense incurred on the loan from P to $DE1_X$ that is generally disregarded for U.S. tax purposes to be regarded for purposes of calculating the year 1 dual consolidated loss, if any, attributable to P's interest in $DE1_X$. As a result, even though the disregarded interest expense is reflected on the books and records of $DE1_X$, it is not taken into account for purposes of calculating income or a dual consolidated loss. Therefore, there is no dual consolidated loss attributable to P's interest in $DE1_X$ in year 1.

Example 24. Dividend income attributable to a separate unit. (i) *Facts.* P owns $DE1_X$ which, in turn, owns FB_X. P's interest in $DE1_X$ and its indirect interest in FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). $DE1_X$ owns $DE3_Y$. $DE3_Y$ owns the stock of FS_X. P's Country X separate unit would, without regard to year 1 dividend income (or related section 78 gross-up) received from FS_X, have a dual consolidated loss of \$75x in year 1. In year 1, FS_X distributes \$50x to $DE3_Y$ that is taxable as a dividend. $DE3_Y$ distributes the same amount to $DE1_X$. P computes foreign taxes deemed paid on the dividend under section 902 of \$25x and includes that amount in gross income under section 78.

(ii) *Result.* The \$50x dividend is reflected on the books and records of $DE3_Y$ and, therefore, is attributable to P's interest in $DE3_Y$ pursuant to § 1.1503(d)–5(c)(3)(i). In addition, the \$25x section 78 gross-up is attributable to P's interest in $DE3_Y$ pursuant to § 1.1503(d)–5(c)(4)(iv). The distribution of \$50x from $DE3_Y$ to $DE1_X$ is generally disregarded for U.S. tax purposes and, therefore, does not give rise to an item that is taken into account for purposes of calculating income or a dual consolidated loss. This is the case even though the item would be reflected on the books and records of $DE1_X$. In addition, pursuant to § 1.1503(d)–5(c)(1)(iii), each separate unit must calculate its own income or dual consolidated loss, and each item of income, gain, deduction, and loss must be taken into account only once. As a result, the dual consolidated loss of \$75x attributable to P's Country X separate unit in year 1 is not reduced by the amount of dividend income attributable to P's indirect interest in $DE3_Y$.

Example 25. Items reflected on books and records of a combined separate unit. (i) *Facts.* P owns $DE1_X$ which, in turn, owns FB_X. P's interest in $DE1_X$ and its indirect interest in FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). The following items are reflected on the books and records of $DE1_X$ in year 1: Sales, depreciation expense, a political contribution, royalty expense paid to P, repairs and maintenance expense paid to a third party, and Country X income tax expense. The amount of sales under U.S. tax principles equals the amount of sales reported for accounting purposes. The depreciation expense is calculated on a straight-line basis over the useful life of the asset for accounting purposes, but is subject to accelerated depreciation for U.S. tax purposes. In addition, the repairs and maintenance expense, which is deducted when paid for accounting purposes, is properly capitalized and amortized over five years for U.S. tax purposes. Finally, P elects to claim as a credit under section 901 the Country X income tax expense that was paid in year 1.

(ii) *Result.* (A) For purposes of determining the income or dual consolidated loss attributable to P's Country X separate unit, items of income, gain, deduction, and loss must first be attributed to the individual separate units (that is, P's interest in $DE1_X$ and its indirect interest in FB_X). For purposes of attributing items to P's interest in $DE1_X$, P's items that are reflected on $DE1_X$'s books and records, as adjusted to conform to U.S. tax principles, are taken into account. See § 1.1503(d)–5(c)(3)(i). For purposes of attributing items (other than interest expense) to FB_X, the principles of section 864(c)(2), (c)(4), and (c)(5) (as set forth in § 1.864–4(c) and §§ 1.864–5 through 1.864–7) must be applied and, for interest expense, the principles of § 1.882–5, as modified under § 1.1503(d)–5(c)(2)(ii), must be applied; however, for these purposes, pursuant to § 1.1503(d)–5(c)(4)(i)(A), FB_X only takes into account items attributable to P's interest in $DE1_X$ and the assets, liabilities, and activities of such interest. In addition, to the extent such items are taken into account by FB_X, they are not taken into account in determining the items attributable to P's interest in $DE1_X$. § 1.1503(d)–5(c)(4)(i)(B). Because P's interest in $DE1_X$ has no assets or liabilities, and conducts no activities, other than through its ownership of FB_X, all of the items that are reflected on the books and records of $DE1_X$, as adjusted to conform to U.S. tax principles, are attributable to FB_X; no items are attributable to P's interest in $DE1_X$.

(B) The items reflected on the books and records of $DE1_X$ must be adjusted to conform to U.S. tax principles. No adjustment is required to sales because the amount of sales under U.S. tax principles equals the amount of sales for accounting purposes. The amount of straight-line depreciation expense reflected on $DE1_X$'s books and records must be adjusted to reflect the amount of depreciation on the asset that is allowable for U.S. tax purposes. The political contribution is not taken into account because it is not deductible for U.S. tax purposes. Similarly, because the royalty expense is paid to P, and therefore is generally disregarded for U.S. tax purposes, it is not taken into account. The repair and maintenance expense that is deducted in year 1 for accounting purposes also must be adjusted to conform to U.S. tax principles. Thus, the repair and maintenance expense will be taken into account in computing the income or dual consolidated loss attributable to P's Country X separate unit over five years (even though no item related to such expense would be reflected on the books and records of $DE1_X$ for years 2 through 5). Finally, because P elected to claim as a credit the Country X foreign taxes paid during year 1, no deduction is allowed for such amount pursuant to section 275(a)(4) and, therefore, the Country X tax expense is not taken into account.

(C) Pursuant to § 1.1503(d)–5(c)(4)(ii)(B), the combined Country X separate unit of P calculates its income or dual consolidated loss by taking into account all the items of income, gain, deduction, and loss that were separately attributable to P's interest in $DE1_X$ and FB_X. However, in this case, there are no items attributable to P's interest in $DE1_X$. Therefore, the items attributable to the Country X separate unit are the items attributable to FB_X.

Example 26. Items attributable to a combined separate unit. (i) *Facts.* P owns $DE1_X$. $DE1_X$ owns a 50 percent interest in PRS_Z, a Country Z entity that is classified as a partnership both for Country Z tax purposes and for U.S. tax purposes. FS_X, which is unrelated to P, owns the remaining 50 percent interest in PRS_Z. PRS_Z carries on operations in Country X that, if carried on by a U.S. person, would constitute a foreign branch as defined in § 1.367(a)-6T(g)(1).

Therefore, P's share of the Country X operations carried on by PRS_Z constitutes a foreign branch separate unit. PRS_Z also owns assets that do not constitute a part of its Country X branch, including all of the interests in TE_T, a disregarded entity. TE_T is an entity incorporated under the laws of Country T, a country that does not have an income tax. Under the laws of Country X, an interest holder of TE_T does not take into account on a current basis the interest holder's share of items of income, gain, deduction, and loss of TE_T.

(ii) *Result.* (A) Pursuant to § 1.1503(d)–1(b)(4)(ii), P's interest in $DE1_X$, and P's indirect ownership of a portion of the Country X operations carried on by PRS_Z, are combined and treated as a single separate unit (Country X separate unit). Pursuant to § 1.1503(d)–5(c)(4)(ii)(A), for purposes of determining P's items of income, gain, deduction, and loss attributable to the Country X separate unit, the items of P are first attributed to each separate unit that composes the Country X separate unit.

(B) Pursuant to § 1.1503(d)–5(c)(2)(i), the principles of section 864(c)(2), (c)(4), and (c)(5) (as set forth in § 1.864–4(c) and §§ 1.864–5 through 1.864–7), apply for purposes of determining P's items of income, gain, deduction (other than interest expense), and loss that are attributable to P's indirect interest in the Country X operations carried on by PRS_Z. For purposes of determining P's interest expense that is attributable to P's indirect interest in the Country X operations carried on by PRS_Z, the principles of § 1.882–5, as modified under § 1.1503(d)–5(c)(2)(ii), shall apply. For purposes of applying these rules, P is treated as a foreign corporation, the Country X operations carried on by PRS_Z are treated as a trade or business within the United States, and the assets of P (including its share of the PRS_Z assets, other than those of the Country X operations) are treated as assets that are not U.S. assets. In addition, because P carries on its share of the Country X operations through $DE1_X$, a hybrid entity, § 1.1503(d)–5(c)(4)(i)(A) provides that only the items attributable to P's interest in $DE1_X$, and only the assets, liabilities, and activities of P's interest in $DE1_X$, are taken into account for purposes of this determination.

(C) TE_T is a transparent entity as defined in § 1.1503(d)–1(b)(16) because it is not taxable as an association for Federal tax purposes, is not subject to income tax in a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis, and is not treated as a pass-through entity under the laws of Country X (the applicable foreign country). TE_T is not a pass-through entity under the laws of Country X because a Country X holder of an interest in TE_T does not take into account on a current basis the interest holder's share of items of income, gain, deduction, and loss of TE_T. For purposes of determining P's items of income, gain, deduction, and loss that are attributable to P's interest in TE_T, only those items of P that are reflected on the books and records of TE_T, as adjusted to conform to U.S. tax principles, are taken into account. § 1.1503(d)–5(c)(3)(i). Because the interest in TE_T is not a separate unit, a loss attributable to such interest is not a dual consolidated loss and is not subject to section 1503(d) and these regulations. Items must nevertheless be attributed to the interests in TE_T. For example, such attribution is required for purposes of calculating the income or dual consolidated loss attributable to the Country X separate unit, and for purposes of applying the domestic use limitation under § 1.1503(d)–4(b) to a dual consolidated loss attributable to the Country X separate unit.

(D) For purposes of determining P's items of income, gain, deduction, and loss that are attributable to P's interest in $DE1_X$, only those items of P that are reflected on the books and records of $DE1_X$, as adjusted to conform to U.S. tax principles, are taken into account. § 1.1503(d)–5(c)(3)(i). For this purpose, $DE1_X$'s distributive share of the items of income, gain, deduction, and loss that are reflected on the books and records of PRS_Z, as adjusted to conform to U.S. tax principles, are treated as being reflected on the books and records of $DE1_X$, except to the extent such items are taken into account by the Country X operations of PRS_Z. See § 1.1503(d)–5(c)(3)(ii) and (4)(i)(B). Because TE_T is a transparent entity, the items reflected on its books and records are not treated as being reflected on the books and records of $DE1_X$.

(E) Pursuant to § 1.1503(d)–5(c)(4)(ii)(B), the combined Country X separate unit of P calculates its income or dual consolidated loss by taking into account all the items of income, gain, deduction, and loss that were separately attributable to P's interest in $DE1_X$ and the Country X operations of PRS_Z owned indirectly by P.

Example 27. Sale of separate unit by another separate unit. (i) *Facts.* P owns $DE3_Y$ which, in turn, owns $DE1_X$. $DE3_Y$ also owns other assets that do not constitute a foreign branch separate unit. $DE1_X$ owns FB_X. Pursuant to § 1.1503(d)–1(b)(4)(ii), P's indirect interests in $DE1_X$ and FB_X are combined and treated as one Country X separate unit (Country X separate unit). $DE3_Y$ sells its interest in $DE1_X$ at the end of year 1 to an unrelated foreign person for cash. The sale results in an ordinary loss of $30x. Items of income, gain, deduction, and loss derived from the assets that gave rise to the $30x loss would be attributable to the Country X separate unit under § 1.1503(d)–5(c) through (e). Without regard to the sale of $DE1_X$, no items of income, gain, deduction, and loss are attributable to P's Country X separate unit in year 1.

(ii) *Result.* Pursuant to § 1.1503(d)–5(c)(4)(iii)(A), the $30x ordinary loss recognized on the sale is attributable to the Country X separate unit, and not P's interest in $DE3_Y$. This is the case because the Country X separate unit is treated as owning the assets that gave rise to the loss under § 1.1503(d)–5(f). Thus, the loss attributable to the sale creates a year 1 dual consolidated loss attributable to the Country X separate unit. In addition, pursuant to § 1.1503(d)–6(d)(2), P cannot make a domestic use election with respect to the dual consolidated loss because the sale of the interest in $DE1_X$ is a triggering event described in § 1.1503(d)–6(e)(1)(iv) and (v). Further, although the year 1 dual consolidated loss would otherwise be subject to the domestic use limitation rule of § 1.1503(d)–4(b), it is eliminated pursuant to § 1.1503(d)–4(d)(1)(ii). Finally, if there were a dual consolidated loss attributable to P's interest in $DE3_Y$, the sale of the interest in $DE1_X$ would not be taken into account for purposes of determining whether there is an asset triggering event with respect to such dual consolidated loss under § 1.1503(d)–6(e)(1)(iv).

Example 28. Gain on sale of tiered separate units. (i) *Facts.* P owns 75 percent of HPS_X, a Country X entity subject to Country X tax on its worldwide income. FS_X owns the remaining 25 percent of HPS_X. HPS_X is classified as a partnership for Federal tax purposes. HPS_X carries on operations in Country Y that, if carried on by a U.S. person, would constitute a foreign branch within the meaning of § 1.367(a)–6T(g)(1). HPS_X also owns assets that do not constitute a part of its Country Y operations and would not themselves constitute a foreign branch within the meaning of § 1.367(a)–6T(g)(1) if owned by a U.S. person. Neither HPS_X nor the Country Y operations has liabilities. P's indirect interest in the Country Y operations carried on by HPS_X, and P's interest in HPS_X, are each separate units. P sells its interest in HPS_X and recognizes a gain of $150x on such sale. Immediately prior to P's sale of its interest in HPS_X, P's portion of the assets of the Country Y operations (that is, assets the income, gain, deduction and loss from which would be attributable to P's Country Y foreign branch separate unit) had a built-in gain of $200x, and P's portion of HPS_X's other assets (that is, assets the income, gain, deduction and loss from which would be attributable to P's interest in HPS_X) had a built-in gain of $100x.

(ii) *Result.* Pursuant to § 1.1503(d)–5(c)(4)(iii)(B), $100x of the total $150x of gain recognized ($200x/$300x × $150x) is attributable to P's indirect interest in its share of the Country Y operations carried on by HPS_X. Similarly, $50x of such gain ($100x/$300x × $150x) is attributable to P's interest in HPS_X.

Example 29. Effect on domestic affiliate. (i) *Facts.* (A) P owns $DE1_X$ which, in turn, owns FB_X. P's interest in $DE1_X$ and its indirect interest in FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). In years 1 and 2, the items of income, gain, deduction, and loss that are attributable to P's Country X separate unit pursuant to § 1.1503(d)–5 are as follows:

Item	Year 1	Year 2
Sales income	$100x	$160x
Salary expense	($75x)	($75x)
Research and experimental expense	($50x)	($50x)
Interest expense	($25x)	($25x)
Income/(dual consolidated loss)	($50x)	$10x

(B) P does not make a domestic use election with respect to the year 1 dual consolidated loss attributable to its Country X separate unit. Pursuant to § 1.1503(d)–4(b) and (c)(2), the year 1 dual consolidated loss

of $50x is treated as a loss incurred by a separate domestic corporation and is subject to the limitations under § 1.1503(d)–4(c)(3). The P consolidated group has $100x of consolidated taxable income in year 2.

(ii) *Result.* (A) P must compute its taxable income for year 1 without taking into account the $50x dual consolidated loss, pursuant to § 1.1503(d)–4(c)(2). Such amount consists of a pro rata portion of the expenses that were taken into account in calculating the year 1 dual consolidated loss. Thus, the items of the dual consolidated loss that are not taken into account by P in computing its taxable income are as follows: $25x of salary expense ($75x/$150x × $50x); $16.67x of research and experimental expense ($50x/$150x × $50x); and $8.33x of interest expense ($25x/$150x × $50x). The remaining amounts of each of these items, together with the $100x of sales income, are taken into account by P in computing its taxable income for year 1 as follows: $50x of salary expense ($75x − $25x); $33.33x of research and experimental expense ($50x − $16.67x); and $16.67x of interest expense ($25x − $8.33x).

(B) Subject to the limitations provided under § 1.1503(d)–4(c), the year 1 $50x dual consolidated loss is carried forward and is available to offset the $10x of income attributable to the Country X separate unit in year 2. Pursuant to § 1.1503(d)–4(c)(4), a pro rata portion of each item of deduction or loss included in such dual consolidated loss is considered to be used to offset the $10x of income, as follows: $5x of salary expense ($25x/$50x × $10x); $3.33x of research and experimental expense ($16.67x/$50x × $10x); and $1.67x of interest expense ($8.33x/$50x × $10x). The remaining amount of each item shall continue to be subject to the limitations under § 1.1503(d)–4(c).

Example 30. Exception to domestic use limitation—no possibility of foreign use because items are not deducted or capitalized under foreign law. (i) *Facts.* P owns $DE1_X$ which, in turn, owns FS_X. In year 1, the sole item of income, gain, deduction, and loss attributable to P's interest in $DE1_X$, as provided under § 1.1503(d)–5, is $100x of interest expense paid on a loan to an unrelated lender. For Country X tax purposes, the $100x interest expense attributable to P's interest in $DE1_X$ in year 1 is treated as a repayment of principal and therefore cannot be deducted (at any time) or capitalized.

(ii) *Result.* The $100x of interest expense attributable to P's interest in $DE1_X$ constitutes a dual consolidated loss. However, because the sole item constituting the dual consolidated loss cannot be deducted or capitalized (at any time) for Country X tax purposes, P can demonstrate that there can be no foreign use of the dual consolidated loss at any time. As a result, pursuant to § 1.1503(d)–6(c)(1), if P prepares a statement described in § 1.1503(d)–6(c)(2) and attaches it to its timely filed tax return, the year 1 dual consolidated loss attributable to P's interest in $DE1_X$ will not be subject to the domestic use limitation rule of § 1.1503(d)–4(b).

Example 31. No exception to domestic use limitation—inability to demonstrate no possibility of foreign use. (i) *Facts.* P owns $DE1_X$ which, in turn, owns FB_X. P's interest in $DE1_X$ and its indirect interest in FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). In year 1, the sole items of income, gain, deduction, and loss attributable to P's Country X separate unit, as provided under § 1.1503(d)–5, are $75x of sales income and $100x of depreciation expense. For Country X tax purposes, $DE1_X$ also generates $75x of sales income in year 1, but the $100x of depreciation expense is not deductible until year 2.

(ii) *Result.* The year 1 $25x net loss attributable to P's interest in the Country X separate unit constitutes a dual consolidated loss. In addition, even though $DE1_X$ has positive income in year 1 for Country X tax purposes, P cannot demonstrate that there is no possibility of foreign use with respect to the Country X separate unit's dual consolidated loss as provided under § 1.1503(d)–6(c)(1)(i). P cannot make such a demonstration because the depreciation expense, an item composing the year 1 dual consolidated loss, is deductible (in a later year) for Country X tax purposes and, therefore, may be available to offset or reduce income for Country X purposes that would constitute a foreign use. For example, if $DE1_X$ elected to be classified as a corporation pursuant to § 301.7701–3(c) of this chapter effective as of the end of year 1, and the deferred depreciation expense were available for Country X tax purposes to offset year 2 income of $DE1_X$, an entity treated as a foreign corporation in year 2 for U.S. tax purposes, there would be a foreign use.

(iii) *Alternative facts.* (A) The facts are the same as in paragraph (i) of this *Example 31*, except as follows. In year 1, the sole items of income, gain, deduction, and loss attributable to P's Country X separate unit, as provided in § 1.1503(d)–5, are $75x of sales income, $100x of interest expense, and $25x of depreciation expense. For Country X tax purposes, $DE1_X$ generates $75x of sales income in year 1; the $100x interest expense is treated as a repayment of principal and therefore cannot be deducted or capitalized (at any time); and the $25x of depreciation expense is not deductible in year 1, but is deductible in year 2.

(B) In year 1, the $50x net loss attributable to P's Country X separate unit constitutes a dual consolidated loss. Even though the $100x interest expense, a nondeductible and noncapital item for Country X tax purposes, exceeds the $50x year 1 dual consolidated loss attributable to P's Country X separate unit, P cannot demonstrate that there is no possibility of foreign use of the dual consolidated loss as provided under § 1.1503(d)–6(c)(1)(i). P cannot make such a demonstration because the $25x depreciation expense, an item of deduction or loss composing the year 1 dual consolidated loss, is deductible under Country X law (in year 2) and, therefore, may be available to offset or reduce income for Country X tax purposes that would constitute a foreign use.

Example 32. Triggering event rebuttal—expiration of losses in foreign country. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. In year 1, DRC_X incurs a dual consolidated loss of $100x. P makes a domestic use election with respect to DRC_X's year 1 dual consolidated loss and such loss therefore is included in the computation of the P group's consolidated taxable income. DRC_X has no income or loss in year 2 through year 5. In year 5, P sells the stock of DRC_X to FS_X. At the time of the sale of the stock of DRC_X, all of the losses and deductions that were included in the computation of the year 1 dual consolidated loss of DRC_X had expired for Country X tax purposes because the laws of Country X only provide for a three-year carryover period for such items.

(ii) *Result.* The sale of DRC_X to FS_X generally would be a triggering event under § 1.1503(d)–6(e)(1)(ii), which would require DRC_X to recapture the year 1 dual consolidated loss (and pay an applicable interest charge) on the P consolidated group's tax return for the year that includes the date on which DRC_X ceases to be a member of the P consolidated group. However, upon adequate documentation that the losses and deductions have expired for Country X tax purposes, P can rebut the presumption that a triggering event has occurred pursuant to § 1.1503(d)–6(e)(2)(i). If the triggering event presumption is rebutted, the domestic use agreement filed by the P consolidated group with respect to the year 1 dual consolidated loss of DRC_X is terminated and has no further effect pursuant to § 1.1503(d)–6(j)(1)(i). If the presumptive triggering event is not rebutted, the domestic use agreement would terminate and have no further effect pursuant to § 1.1503(d)–6(j)(1)(iii) because the dual consolidated loss would be recaptured.

Example 33. Triggering events and rebuttals—tax basis carryover transaction. (i) *Facts.* (A) P owns $DE1_X$. $DE1_X$'s sole asset is A, which it acquired at the beginning of year 1 for $100x. $DE1_X$ does not have any liabilities. For U.S. tax purposes, $DE1_X$'s tax basis in A at the beginning of year 1 is $100x and $DE1_X$'s sole item of income, gain, deduction, and loss for year 1 is a $20x depreciation deduction attributable to A. As a result, the $20x depreciation deduction constitutes a dual consolidated loss attributable to P's interest in $DE1_X$. P makes a domestic use election with respect to the year 1 dual consolidated loss.

(B) For Country X tax purposes, $DE1_X$ has a $100x tax basis in A at the beginning of year 1, but A is not a depreciable asset. As a result, $DE1_X$ does not have any items of income, gain, deduction, and loss in year 1 for Country X tax purposes.

(C) During year 2, P sells its interest in $DE1_X$ to FS_X for $80x. P's disposition of its interest in $DE1_X$ constitutes a presumptive triggering event under § 1.1503(d)–6(e)(1)(iv) and (v) requiring the recapture of the year 1 $20x dual consolidated loss (plus the applicable interest charge). For Country X tax purposes, $DE1_X$ retains its tax basis of $100x in A following the sale.

(ii) *Result.* The year 1 dual consolidated loss is a result of the $20x depreciation deduction attributable to A. Although no item of deduction or loss was recognized by $DE1_X$ at the time of the sale for Country X tax purposes, the deduction composing the dual consolidated loss was retained by $DE1_X$ after the sale in the form of tax basis in A. As a result, a portion of the dual consolidated

loss may be available to offset income for Country X tax purposes in a manner that would constitute a foreign use. For example, if $DE1_X$ were to dispose of A, the amount of gain recognized by $DE1_X$ would be reduced (or an amount of loss recognized by $DE1_X$ would be increased) and, therefore, an item composing the dual consolidated loss would be available, under U.S. tax principles, to reduce income of a foreign corporation (and an owner of an interest in a hybrid entity that is not a separate unit). Thus, P cannot demonstrate pursuant to § 1.1503(d)–6(e)(2)(i) that there can be no foreign use of the year 1 dual consolidated loss following the triggering event, and must recapture the year 1 dual consolidated loss. Pursuant to § 1.1503(d)–6(j)(1)(iii), the domestic use agreement filed by the P consolidated group with respect to the year 1 dual consolidated loss is terminated and has no further effect.

(iii) *Alternative facts.* The facts are the same as paragraph (i) of this *Example 33*, except that instead of P selling its interest in $DE1_X$ to FS_X, $DE1_X$ sells asset A to FS_X for $80x and, for Country X tax purposes, FS_X's tax basis in A immediately after the sale is $80x. P's disposition of Asset A constitutes a presumptive triggering event under § 1.1503(d)–6(e)(1)(iv) requiring the recapture of the year 1 $20x dual consolidated loss (plus the applicable interest charge). For Country X tax purposes, FS_X's tax basis in A was not determined, in whole or in part, by reference to the basis of A in the hands of $DE1_X$. As a result, the deduction composing the dual consolidated loss will not give rise to an item of deduction or loss in the form of tax basis for Country X tax purposes (for example, when FS_X disposes of A). Therefore, P may be able to demonstrate (for example, by obtaining the opinion of a Country X tax advisor) pursuant to § 1.1503(d)–6(e)(2)(i) that there can be no foreign use of the year 1 dual consolidated loss and, thus, would not be required to recapture the year 1 dual consolidated loss.

Example 34. Triggering event resulting in a single consolidated group where acquirer files a new domestic use agreement. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. In year 1, DRC_X incurs a dual consolidated loss and P makes a domestic use election with respect to such loss. No member of the P consolidated group incurs a dual consolidated loss in year 2. At the end of year 2, T, the parent of the T consolidated group, acquires all the stock of P, and all the members of the P group, including DRC_X, become members of a consolidated group of which T is the common parent.

(ii) *Result.* (A) Under § 1.1503(d)–6(f)(2)(ii)(B), the acquisition by T of the P consolidated group is not an event described in § 1.1503(d)–6(e)(1)(ii) requiring the recapture of the year 1 dual consolidated loss of DRC_X (and the payment of an interest charge), provided that the T consolidated group files a new domestic use agreement described in § 1.1503(d)–6(f)(2)(iii)(A). If a new domestic use agreement is filed, then pursuant to § 1.1503(d)–6(j)(1)(ii), the domestic use agreement filed by the P consolidated group with respect to the year 1 dual consolidated loss of DRC_X is terminated and has no further effect.

(B) Assume that T files a new domestic use agreement and a triggering event occurs at the end of year 3. As a result, the T consolidated group must recapture the dual consolidated loss that DRC_X incurred in year 1 (and pay an interest charge), as provided in § 1.1503(d)–6(h). Each member of the T consolidated group, including DRC_X and any former members of the P consolidated group, is severally liable for the additional tax (and the interest charge) due upon the recapture of the dual consolidated loss of DRC_X. In addition, pursuant to § 1.1503(d)–6(j)(1)(iii), the new domestic use agreement filed by the T group with respect to the year 1 dual consolidated loss of DRC_X is terminated and has no further effect.

Example 35. Triggering event exceptions for certain deemed transfers. (i) *Facts.* P owns $DE1_X$. In year 1, there is a $100x dual consolidated loss attributable to P's interest in $DE1_X$. P files a domestic use agreement under § 1.1503(d)–6(d) with respect to such loss. During year 2, P sells 33 percent of its interest in $DE1_X$ to T, an unrelated domestic corporation.

(ii) *Result.* Pursuant to Rev. Rul. 99–5, the transaction is treated as if P sold 33 percent of its interest in each of $DE1_X$'s assets to T and then immediately thereafter P and T transferred their interests in the assets of $DE1_X$ to a partnership in exchange for an ownership interest therein. Upon the transfer of 33 percent of P's interest to T, a domestic corporation, no foreign use occurs and, therefore, there is no foreign use triggering event. However, P's deemed transfer of 67 percent of its interest in the assets of $DE1_X$ to a partnership is nominally a triggering event under § 1.1503(d)–6(e)(1)(iv). Because the initial transfer of 33 percent of $DE1_X$'s interest was to a domestic corporation and there is only a triggering event because of the deemed transfer under Rev. Rul. 99–5, the deemed asset transfer is not treated as resulting in a triggering event pursuant to § 1.1503(d)–6(f)(4).

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 35*, except that P sells 60 percent (rather than 33 percent) of its interest in $DE1_X$ to T. The sale is a triggering event under § 1.1503(d)–6(e)(1)(iv) and (v) without regard to the occurrence of a deemed transaction. Therefore, § 1.1503(d)–6(f)(4) does not apply.

Example 36. Triggering event exception involving multiple parties. (i) *Facts.* P owns $DE1_X$ which, in turn, owns FB_X. P's interest in $DE1_X$ and its indirect interest in FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). In year 1, there is a $100x dual consolidated loss attributable to P's Country X separate unit and P makes a domestic use election with respect to such loss. No member of the P consolidated group incurs a dual consolidated loss in year 2. At the end of year 2, T, the parent of the T consolidated group, acquires all of P's interest in $DE1_X$ for cash.

(ii) *Result.* (A) Under § 1.1503(d)–6(f)(2)(i)(B), the acquisition by T of the interest in $DE1_X$ is not an event described in § 1.1503(d)–6(e)(1)(iv) or (v) requiring the recapture of the year 1 dual consolidated loss attributable to the Country X separate unit (and the payment of an interest charge), provided: (1) the T consolidated group files a new domestic use agreement described in § 1.1503(d)–6(f)(2)(iii)(A) with respect to the year 1 dual consolidated loss of the Country X separate unit; and (2) the P consolidated group files a statement described in § 1.1503(d)–6(f)(2)(iii)(B) with respect to the year 1 dual consolidated loss. If these requirements are satisfied, then pursuant to § 1.1503(d)–6(j)(1)(ii) the domestic use agreement filed by the P consolidated group with respect to the year 1 dual consolidated loss is terminated and has no further effect (if these requirements are not satisfied such that the P consolidated group recaptures the dual consolidated loss, the domestic use agreement would terminate pursuant to § 1.1503(d)–6(j)(1)(iii)).

(B) Assume a triggering event occurs at the end of year 3 that requires recapture by the T consolidated group of the year 1 dual consolidated loss, as well as the payment of an interest charge, as provided in § 1.1503(d)–6(h). T continues to own the Country X separate unit after the triggering event. In that case, each member of the T consolidated group is severally liable for the additional tax (and the interest charge) due upon the recapture of the year 1 dual consolidated loss. The T consolidated group must prepare a statement that computes the recapture tax amount as provided under § 1.1503(d)–6(h)(3)(iii). Pursuant to § 1.1503(d)–6(h)(3)(iv)(A), the recapture tax amount is assessed as an income tax liability of the T consolidated group and is considered as having been properly assessed as an income tax liability of the P consolidated group. If the T consolidated group does not pay in full the income tax liability attributable to the recapture tax amount, the unpaid balance of such recapture tax amount may be collected from the P consolidated group in accordance with the provisions of § 1.1503(d)–6(h)(3)(iv)(B). Pursuant to § 1.1503(d)–6(j)(1)(iii), the new domestic use agreement filed by the T consolidated group is terminated and has no further effect. Finally, pursuant to § 1.1503(d)–6(h)(6)(iii), T is treated as if it incurred the dual consolidated loss that is recaptured for purposes of applying § 1.1503(d)–6(h)(6)(i). Thus, T has a reconstituted net operating loss equal to the amount of the year 1 dual consolidated loss that was recaptured, and such loss is attributable to the Country X separate unit (and subject to the rules and limitations under § 1.1503(d)–6(h)(6)(i)). Because T is treated as if it incurred the year 1 dual consolidated loss, P shall not be treated as having a net operating loss under § 1.1503(d)–6(h)(6)(i).

Example 37. No foreign use following multiple-party event exception to triggering event. (i) *Facts.* P owns $DE1_X$ which, in turn, owns FB_X. P's interest in $DE1_X$ and its indirect interest in FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). In year 1, there is a $100x dual consolidated loss attributable to P's Country X separate unit and P makes a domestic use election with respect to such loss. T, a domestic corporation unrelated to P, owns 95

percent of PRS, a partnership. FS_X owns the remaining 5 percent of PRS. At the beginning of year 3, PRS purchases 100 percent of the interest in $DE1_X$ from P for cash. For Country X tax purposes, the $100x loss incurred by $DE1_X$ in year 1 carries forward and is available to offset income of $DE1_X$ in subsequent years.

(ii) *Result.* P's sale of its interest in $DE1_X$ is a triggering event under § 1.1503(d)–6(e)(1)(iv) and (v). However, if P and T comply with the requirements under § 1.1503(d)–6(f)(2)(iii), the sale would qualify for the multiple-party event exception under § 1.1503(d)–6(f)(2)(i). In addition, because the $100x loss of $DE1_X$ carries forward to subsequent years for Country X purposes and is available to offset income of $DE1_X$, there would be a foreign use of the dual consolidated loss immediately after the sale pursuant to § 1.1503(d)–3(a)(1). This is the case because the dual consolidated loss would be available to offset or reduce income that is considered, under U.S. tax principles, to be an item of FS_X, a foreign corporation (it would also be a foreign use because FS_X is an indirect owner of an interest in a hybrid entity that is not a separate unit). However, there is no foreign use in this case as a result of FS_X's 5 percent interest in $DE1_X$ pursuant to § 1.1503(d)–3(c)(8).

Example 38. Character and source of recapture income. (i) *Facts.* (A) P owns FB_X. In year 1, the items of income, gain, deduction, and loss that are attributable to FB_X for purposes of determining whether it has a dual consolidated loss are as follows:

Sales income	$100x
Salary expense	($75x)
Interest expense	($50x)
Dual consolidated loss	($25x)

(B) P makes a domestic use election with respect to the year 1 dual consolidated loss attributable to FB_X and, thus, the $25x dual consolidated loss is used to offset the P group's consolidated taxable income.

(C) Pursuant to § 1.861–8, the $75x of salary expense incurred by FB_X is allocated and apportioned entirely to foreign source general limitation income. Pursuant to § 1.861–9T, $25x of the $50x interest expense attributable to FB_X is allocated and apportioned to domestic source income, $15x of such interest expense is allocated and apportioned to foreign source general limitation income, and the remaining $10x of such interest expense is allocated and apportioned to foreign source passive income.

(D) During year 2, $5x of income is attributable to FB_X under the rules of § 1.1503(d)–5, and the P consolidated group has $100x of consolidated taxable income. At the end of year 2, FB_X undergoes a triggering event described in § 1.1503(d)–6(e)(1), and P continues to own FB_X following the triggering event. Pursuant to § 1.1503(d)–6(h)(2)(i), P is able to demonstrate to the satisfaction of the Commissioner that the $25x dual consolidated loss attributable to FB_X in year 1 would have offset the $5x of income attributable to FB_X in year 2, if no domestic use election were made with respect to the year 1 loss such that it was subject to the limitations of § 1.1503(d)–4(b) and (c).

(ii) *Result.* P must recapture and report as ordinary income $20x ($25x − $5x) of FB_X's year 1 dual consolidated loss, plus applicable interest. The $20x recapture income is attributable to FB_X pursuant to § 1.1503(d)–5(c)(4)(vi). Pursuant to § 1.1503(d)–6(h)(5), the recapture income is treated as ordinary income whose source and character (including section 904 separate limitation character) is determined by reference to the manner in which the recaptured items of expense or loss taken into account in calculating the dual consolidated loss were allocated and apportioned. Further, pursuant to § 1.1503(d)–6(h)(5), the pro rata computation described in § 1.1503(d)–4(c)(4) shall apply. Thus, the character and source of the recapture income is determined in the same proportion as each item of deduction or loss that contributed to the dual consolidated loss being recaptured. Accordingly, P's $20x of recapture income is characterized and sourced as follows: $4x of domestic source income (($25x/$125x) x $20x); $14.4x of foreign source general limitation income (($75x + $15x)/$125x) x $20x); and $1.6x of foreign source passive income (($10x/$125x) x $20x). Pursuant to § 1.1503(d)–6(h)(6)(i), commencing in year 3, the $20x recapture amount is reconstituted and treated as a net operating loss incurred by FB_X in a separate return limitation year, subject to the limitation under § 1.1503(d)–4(b) (and therefore subject to the restrictions of § 1.1503(d)–4(c)). Pursuant to § 1.1503(d)–6(j)(1)(iii), the domestic use agreement filed by the P consolidated group with respect to the year 1 dual consolidated loss of FB_X is terminated and has no further effect.

Example 39. Interest charge without recapture. (i) *Facts.* P owns $DE1_X$ which, in turn, owns FB_X. P's interest in $DE1_X$ and its indirect interest in FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). In year 1, a dual consolidated loss of $100x is attributable to P's Country X separate unit. P makes a domestic use election with respect to such loss and uses the loss to offset the P group's consolidated taxable income. In year 2, there is $100x of income attributable to P's Country X separate unit and the P consolidated group has $200x of consolidated taxable income. At the end of year 2, the Country X separate unit undergoes a triggering event within the meaning of § 1.1503(d)–6(e)(1). P demonstrates, to the satisfaction of the Commissioner, that if no domestic use election were made with respect to the year 1 dual consolidated loss such that it was subject to the limitations of § 1.1503(d)–4(b) and (c), the year 1 $100x dual consolidated loss would have been offset by the $100x of year 2 income.

(ii) *Result.* There is no recapture of the year 1 dual consolidated loss attributable to P's Country X separate unit because it is reduced to zero under § 1.1503(d)–6(h)(2)(i). However, P is liable for one year of interest charge under § 1.1503(d)–6(h)(1)(ii), even though P's recapture amount is zero. This is the case because the P consolidated group had the benefit of the dual consolidated loss in year 1, and the income that offset the recapture income was not recognized until year 2. Pursuant to § 1.1503(d)–6(j)(1)(iii), the domestic use agreement filed by the P consolidated group with respect to the year 1 dual consolidated loss is terminated and has no further effect.

Example 40. Reduced recapture and interest charge, and reconstituted dual consolidated loss. (i) *Facts.* S owns $DE1_X$ which, in turn, owns FB_X. S's interest in $DE1_X$ and its indirect interest in FB_X are combined and treated as a single separate unit (Country X separate unit) pursuant to § 1.1503(d)–1(b)(4)(ii). In year 1, there is a $100x dual consolidated loss attributable to S's Country X separate unit, and P earns $100x. P makes a domestic use election with respect to the Country X separate unit's year 1 dual consolidated loss. Therefore, the consolidated group is permitted to offset P's $100x of income with the Country X separate unit's $100x dual consolidated loss. In year 2, $30x of income is attributable to the Country X separate unit under the rules of § 1.1503(d)–5 and such income is offset by a $30x net operating loss incurred by P in such year. In year 3, $25x of income is attributable to the Country X separate unit under the rules of § 1.1503(d)–5, and P earns $15x of income. In addition, at the end of year 3 there is a foreign use of the year 1 dual consolidated loss that constitutes a triggering event. S continues to own the Country X separate unit after the triggering event.

(ii) *Result.* (A) Under the presumptive rule of § 1.1503(d)–6(h)(1)(i), S must recapture $100x (plus applicable interest). However, under § 1.1503(d)–6(h)(2)(i), S may be able to demonstrate that a lesser amount is subject to recapture. The lesser amount is the amount of the $100x dual consolidated loss that would have remained subject to § 1.1503(d)–4(c) at the time of the foreign use triggering event if a domestic use election had not been made for such loss.

(B) Although the combined separate unit earned $30x of income in year 2, there was no consolidated taxable income in such year. As a result, as of the end of year 2 the $100x dual consolidated loss would continue to be subject to § 1.1503(d)–4(c) if a domestic use election had not been made for such loss. However, the $30x earned in year 2 can be carried forward to subsequent taxable years and may reduce the recapture income to the extent of consolidated taxable income generated in subsequent years. In year 3, $25x of income was attributable to the Country X separate unit and P earns $15x of income. Thus, the P consolidated group has $40x of consolidated taxable income in year 3. As a result, the $100x of recapture income can be reduced by $40x. This is the case because if a domestic use election had not been made for the $100x year 1 dual consolidated loss such that it was subject to the limitations of § 1.1503(d)–4(b) and (c), only $60x of the loss would have remained subject to such limitations at the time of the foreign use triggering event. Accordingly, if S can adequately document the lesser amount, the amount of recapture income is $60x ($100x − $40x). The $60x recapture income is attributable to the Country X separate unit pursuant to § 1.1503(d)–5(c)(4)(vi).

(C) Pursuant to § 1.1503(d)–6(h)(6)(i), commencing in year 4, the $60x recapture

amount is reconstituted and treated as a net operating loss incurred by the Country X separate unit of S in a separate return limitation year, subject to the limitation under § 1.1503(d)–4(b) (and therefore subject to the restrictions of § 1.1503(d)–4(c)). The loss is only available for carryover to taxable years after year 3 (and is not available for carryback). The carryover period of the loss, for purposes of section 172(b), will start from year 1, when the dual consolidated loss that was subject to recapture was incurred. In addition, such reconstituted net operating loss is not eligible for the exceptions contained in § 1.1503(d)–6(b) through (d). Pursuant to § 1.1503(d)–6(j)(1)(iii), the domestic use agreement filed by the P consolidated group with respect to the year 1 dual consolidated of the Country X separate unit is terminated and has no further effect.

(iii) *Alternative facts.* The facts are the same as in paragraph (i) of this *Example 40,* except that the triggering event that occurs at the end of year 3 is a sale by S of its entire interest in $DE1_X$ to B, an unrelated domestic corporation. The sale does not qualify as a transaction described in section 381. The results are the same as in paragraph (ii) of this *Example 40,* except that pursuant to § 1.1503(d)–6(h)(6)(ii) the $60x net operating loss is not reconstituted (with respect to either S or B). The loss is not reconstituted with respect to S because the Country X separate unit ceases to be a separate unit of S (or any other member of the consolidated group that includes S) and therefore would have been eliminated pursuant to § 1.1503(d)–4(d)(1)(ii) if no domestic use election had been made with respect to such loss. The loss is not reconstituted with respect to B because B was not the domestic owner of the combined separate unit when the dual consolidated loss that is recaptured was incurred, and B did not acquire the Country X separate unit in a section 381 transaction.

§ 1.1503(d)–8 Effective dates.

(a) *General rule.* Except as provided in paragraph (b) of this section, this paragraph (a) provides the dates of applicability of §§ 1.1503(d)–1 through 1.1503(d)–7. Sections 1.1503(d)–1 through 1.1503(d)–7 shall apply to dual consolidated losses incurred in taxable years beginning on or after April 18, 2007. However, a taxpayer may apply §§ 1.1503(d)–1 through 1.1503(d)–7, in their entirety, to dual consolidated losses incurred in taxable years beginning on or after January 1, 2007, by filing its return and attaching to such return the domestic use agreements, certifications, or other information in accordance with these regulations. For purposes of this section, the term *application date* means either April 18, 2007, or, if the taxpayer applies these regulations pursuant to the preceding sentence, January 1, 2007. Section 1.1503–2 applies for dual consolidated losses incurred in taxable years beginning on or after October 1, 1992, and before the application date.

(b) *Special rules*—(1) *Reduction of term of agreements filed under §§ 1.1503–2(g)(2)(i) or 1.1503–2T(g)(2)(i).* If an agreement was filed (or subsequently treated as filed) under §§ 1.1503–2(g)(2)(i) or 1.1503–2T(g)(2)(i) and remains in effect (that is, the dual consolidated loss subject to the agreement has not been recaptured pursuant to § 1.1503–2(g)(2)(vii)) as of the application date, such agreement will be considered by the Internal Revenue Service to apply only for any taxable year up to and including the fifth taxable year following the year in which the dual consolidated loss that is the subject of the agreement was incurred and thereafter will have no effect.

(2) *Reduction of term of closing agreements entered into pursuant to § 1.1503–2(g)(2)(iv)(B)(3)(i).* Taxpayers subject to the terms of a closing agreement entered into with the Internal Revenue Service pursuant to § 1.1503–2(g)(2)(iv)(B)(*3*)(i) and Rev. Proc. 2000–42 (2000–2 CB 394), see § 601.601(d)(2)(ii)(*b*) of this chapter, will be deemed to have satisfied the closing agreement's fifteen-year certification period requirement if the five-year certification period specified in § 1.1503(d)–1(b)(20) has elapsed, provided such closing agreement is still in effect as of the application date, and provided the dual consolidated losses have not been recaptured. For example, if a calendar year taxpayer that has a January 1, 2007, application date entered into a closing agreement with respect to a dual consolidated loss incurred in 2003 and, as of January 1, 2007, the closing agreement is still in effect and the dual consolidated loss subject to the closing agreement has not been recaptured, then the closing agreement's fifteen-year certification period will be deemed satisfied when the five-year certification period described in § 1.1503(d)–1(b)(20) has elapsed. Thus, the dual consolidated loss will be subject to the recapture and certification provisions of the closing agreement in such a case only through December 31, 2008. Alternatively, if a calendar year taxpayer that has a January 1, 2007, application date entered into a closing agreement with respect to a dual consolidated loss incurred in 2000 and, as of January 1, 2007, the closing agreement is still in effect and the dual consolidated loss subject to the closing agreement has not been recaptured, then the certification period is deemed to be satisfied.

(3) *Relief for untimely filings.* Paragraphs (b)(3)(i) through (iii) of this section set forth the effective dates for rules that provide relief for the failure to make timely filings of an election, agreement, statement, rebuttal, computation, closing agreement, or other information, pursuant to section 1503(d) and these regulations.

(i) *General rule.* Except as provided in paragraphs (b)(3)(ii) and (iii) of this section, the reasonable cause relief standard of § 1.1503(d)–1(c) applies for all untimely filings with respect to dual consolidated losses, including with respect to dual consolidated losses incurred in taxable years beginning before the application date.

(ii) *Closing agreements.* Solely with respect to closing agreements described in § 1.1503–2(g)(2)(iv)(B)(*3*)(i) and Rev. Proc. 2000–42, taxpayers must request relief for untimely requests through the process provided under §§ 301.9100–1 through 301.9100–3 of this chapter. See paragraph (b)(4) of this section for rules that permit the multiple-party event exception, rather than closing agreements, for certain triggering events.

(iii) *Pending requests for relief.* Taxpayers that have letter ruling requests under §§ 301.9100–1 through 301.9100–3 of this chapter pending as of March 19, 2007 (other than requests under paragraph (b)(3)(ii) of this section) are not required to use the reasonable cause procedure under § 1.1503(d)–1(c); however, if such taxpayers have not yet received a determination of their request, they may withdraw their request consistent with the procedures contained in Rev. Proc. 2007–1 (2007–1 IRB 1), see § 601.601(d)(2)(ii)(*b*) of this chapter, (or any succeeding document) and use the reasonable cause procedure set forth in § 1.1503(d)–1(c). In that event, the Internal Revenue Service will refund the taxpayer's user fee.

(4) *Multiple-party event exception to triggering events.* This paragraph (b)(4) applies to events described in § 1.1503–2(g)(2)(iv)(B)(*1*)(*i*) through (*iii*) that occur after April 18, 2007 and that are with respect to dual consolidated losses that were incurred in taxable years beginning on or after October 1, 1992, and before the application date. The events described in the previous sentence are not eligible for the exception described in § 1.1503–2(g)(2)(iv)(B)(*1*), but instead are eligible for the multiple-party event exception described in § 1.1503(d)–6(f)(2)(i), as modified by this paragraph (b)(4). Thus, such events are not eligible for a closing agreement described in § 1.1503–2(g)(2)(iv)(B)(*3*)(*i*) and Rev. Proc. 2000–42. For purposes of applying § 1.1503(d)–6(f)(2)(i) to transactions covered by this paragraph, agreements described in § 1.1503–2(g)(2)(i) (rather than domestic use agreements) shall be

filed, and subsequent triggering events and exceptions thereto have the meaning provided in § 1.1503–2(g)(2)(iii)(A) and (iv) (other than the exception provided under § 1.1503–2(g)(2)(iv)(B)(*1*)). For example, if a calendar year taxpayer that has a January 1, 2007, application date filed an election under § 1.1503–2(g)(2)(i) with respect to a dual consolidated loss that was incurred in 2004, and a triggering event described in § 1.1503–2(g)(2)(iv)(B)(*1*)(*ii*) occurs with respect to such dual consolidated loss after April 18, 2007, then the event is eligible for the multiple-party event exception under § 1.1503(d)–6(f)(2)(i) (and not the exception under § 1.1503–2(g)(2)(iv)(B)(*1*)). However, in order to comply with § 1.1503(d)–6(f)(2)(iii)(A), the subsequent elector must file a new agreement described in § 1.1503–2(g)(2)(i) (rather than a new domestic use agreement). In addition, for purposes of determining whether there is a subsequent triggering event, and exceptions thereto, pursuant to such new agreement, § 1.1503–2(g)(2)(iii)(A) and (iv) (other than the exception provided under § 1.1503–2(g)(2)(iv)(B)(*1*)) shall apply. Notwithstanding the general application of this paragraph (b)(4) to events described in described in § 1.1503–2(g)(2)(iv)(B)(*1*)(*i*) through (*iii*) that occur after April 18, 2007, a taxpayer may choose to apply this paragraph (b)(4) to events described in § 1.1503–2(g)(2)(iv)(B)(*1*)(*i*) through (*iii*) that occur after March 19, 2007 and on or before April 18, 2007.

(5) *Basis adjustment rules.* Taxpayers may apply the basis adjustment rules of § 1.1503(d)–5(g) for all open years in which such basis is relevant, even if the basis adjustment is attributable to a dual consolidated loss incurred (or recaptured) in a closed taxable year. Taxpayers applying the provisions of § 1.1503(d)–5(g), however, must do so consistently for all open years.

PART 602—OMB CONTROL NUMBERS UNDER PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 6.** In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1503(d)–1	1545–1946
1.1503(d)–3	1545–1946
1.1503(d)–4	1545–1646
1.1503(d)–5	1545–1946
1.1503(d)–6	1545–1946
* * * * *	

Approved: February 27, 2007.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–4618 Filed 3–16–07; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 521/P.L. 110–12

To designate the facility of the United States Postal Service located at 2633 11th Street in Rock Island, Illinois, as the "Lane Evans Post Office Building". (Mar. 15, 2007; 121 Stat. 67)

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24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–060–00080–1)	49.00	Apr. 1, 2006
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–060–00084–4)	56.00	Apr. 1, 2006
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–060–00095–0)	28.00	Apr. 1, 2006
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–060–00098–4)	12.00	[6] Apr. 1, 2006
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–060–00101–8)	18.00	Apr. 1, 2006
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–060–00104–2)	50.00	July 1, 2006
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[9] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[9] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
660–End	(869–060–00222–7)	31.00	Oct. 1, 2006
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2007 CFR set		1,389.00	2007
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Subscription (mailed as issued)		332.00	2007
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Complete set (one-time mailing)		325.00	2005

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.